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ABSTRACT

Study objectives were to assess the status of a representative number of American Indian tribal governments and to share that information with other members of the national Indian community. Sixteen Indian law students, assisted by 8 Indian lawyers, worked on 17 different Indian reservations during the summer of 1974. Generally working on their own reservations, students performed an objective and systematic evaluation of each tribal government, assisted tribal governments in forming remedial objectives, and prepared substantive research reports. The research reports focused on the following areas: (1) tribal governing structure; (2) economic development of tribal resources and the tribal governing structure; (3) tribal court structure; (4) administration of governing services; (5) relationship of tribal government structure to the Bureau of Indian Affairs; and (6) the Indian Civil Rights Act and the Federal Government. While specific recommendations proved unrealistic due to the diverse complexity of individual tribes, broad recommendations included: (1) establishment of a tribal resource center for purposes of providing technical assistance in developing and exercising governing powers and (2) development of evaluation standards by which various agencies and individual tribal governments might be effectively evaluated. (JC)

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INDIAN TRIBES AS GOVERNMENTS

An Analysis of the Governing Institutions of Selected Indian Tribes: Report on a Research Project Conducted by a Team of Indian Lawyers and Law Students - June through August, 1974

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FOREWORD

This report is intended to provide documentation of the findings of a team of Indian lawyers and law students who participated this past summer (1974) in an "action-research" project to conduct an assessment of the institutions of tribal government. In all, sixteen Indian law students and eight Indian lawyers worked on seventeen different Indian reservations over the course of the summer. The idea for this project was based on a growing conviction shared by members of the Indian legal community that the key to real progress in the Indian legal movement lies in the strengthening of tribal governing institutions. While important legal victories may be won in the area of hunting and fishing rights or in the field of taxation, it must be recognized that without a strong and viable tribal government to implement such victories they can be rendered meaningless. Yet, it must also be acknowledged that too little is known about the status of tribal governments by the legal community. We do not know the answers to such critical questions as: exactly what are the major strengths and weaknesses of the judicial systems of tribes as they relate to the requirements of the Indian Civil Rights Act, or what are the capabilities of tribes for governmental regulation of natural resource development on their reservations. Perhaps most importantly, we must ask exactly how we can begin to assist tribes in strengthening their self-governing institutions.

Our purpose then in initiating and organizing this research project was simply to gain a comprehensive picture of the status of a

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representative number of tribal governments and to share our research findings with other members of the national Indian community. It is our hope that this report will contribute toward articulating what some of the more critical needs in the area of tribal government are and in formulating national goals which the Indian community can address itself to. It must also be pointed out that we had promised to each tribal community participating in this study that a collective report would be compiled and a copy furnished to them in order that they might study our analysis and recommendations and perhaps gain something thereby.

As a glance at our outline of contents will reveal, the bulk of this document is comprised of the Indian law students' research reports organized around the key issues which we had decided to focus upon. We hope this is ample warning for the reader not to expect a comprehensive manifesto on tribal government but rather a beginning of the difficult job of presenting a picture of tribal governments today.

Alan Parker
Project Director

John Hay Whitney Foundation Grant Recipient

Director of Special Projects
American Indian Lawyer Training Program, Inc.
Washington, D. C.

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Elmer Savilla	- Quechan Tribe	- Winterhaven, California
Mabel Antone	- Papago Tribe	- Sells, Arizona
Elmer Halfmoon	- Nez Perce Tribe	- Lapwai, Idaho
Tom Pablo	- Flathead Tribe	- Dixon, Montana
Foursouls	- Chippewa/Cree Tribe	- Box Elder, Montana
Paul Tafoya	- Santa Clara Pueblo	- Espanola, New Mexico
Gilbert Pacheco	- Laguna Pueblo	- Laguna, New Mexico
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I. INTRODUCTION

In the Spring of 1973 the village of Wounded Knee on the Oglala Sioux Indian Reservation in South Dakota was occupied for over three months by a group of Indians as a protest gesture aimed at both the incumbent tribal administration and the Federal Government's role on the reservation. The protest group claimed to represent the "traditional" elements of the Oglala Tribe in their efforts to gain recognition for 1868 Sioux treaty rights and reestablishment of a traditional form of Indian self-government. They demanded that the present tribal council, elected under a constitution drafted in accordance with the terms of the 1934 Indian Reorganization Act (IRA) calling for federally supervised elections, be dissolved by federal officials and that a referendum vote of all tribal members be held as a prelude to instituting a traditional, non-federally supervised form of government. Many were surprised to learn that under that same federal law (the IRA) federal officials were expressly denied authority to dissolve a duly elected IRA tribal government.

In the Spring of 1974 the United States Senate passed and sent to the House of Representatives a bill entitled the "Indian Self-Determination and Education Assistance Act" (S. 1017) providing for funds to support the administration of tribal governments and Congressional endorsement of a policy of contracting for federal services by tribes. According to the terms of such contracts, the tribes assume the responsibility for administering a wide range of governmental services

previously carried out on the reservations by various federal agencies, primarily the Bureau of Indian Affairs (BIA). Although it can certainly be said that "contracting" adds to the scope of self-government as exercised by Indian tribes, many experienced Indian leaders remain unconvinced as to the wisdom of contracting on a long range policy, particularly in the form presently being proposed by the BIA.

In the Fall of 1974 the United States Supreme Court was asked to decide two lawsuits which will have a very direct bearing on the definition of the legal status of Indian tribes and their governing powers. In U. S. v. Mazurie the Court must determine whether or not Indian tribes have the authority to regulate the licensing of a liquor establishment located within the boundaries of a reservation but owned by a non-Indian and situated on non-trust lands. Ultimately at stake is the right of a tribe to act as a government. Also on the docket for the Supreme Court's Fall term is the case of Tonasket v. Thompson. In this case plaintiff filed a suit against her tribal council under the 1968 Indian Civil Rights Act alleging that her rights to equal protection were violated by the council's refusal to enroll her children in the tribe. As a defense the council has asserted that a determination as to one's eligibility for tribal membership is an internal matter of the tribe and as such is beyond the scope of federal intervention. As a corollary policy argument the tribe has noted in this suit that the tribal community ultimately determines what the law or eligibility standards ought to be for tribal membership and to substitute the opinion of a non-Indian federal judge under essentially non-Indian standards is a violation of the principle of Indian self-government.

The developments briefly described above are only a sampling of the many events which today constitute an atmosphere of change and challenge for Indian tribal governments. In many respects the problems confronting Indian tribal leaders are not very different from those which burden the leaders of non-Indian communities across the country as they struggle to meet the demands of modern society.

That is, tribal council members as the embodiment of the community's governing structure are in a position comparable to that of their counterparts on city or municipal councils. However, there are significant differences between the roles of tribal and city councils and it is in the process of gaining an understanding of these differences that one can gain an appreciation for the unique needs a tribal council has for services and support which are distinct from those which may be required by a municipal council. Undoubtedly the most basic difference lies in the fact that the tribe, historically, legally and socially, comprises a self-governing unit which is outside of the federalist system. The source of an Indian tribe's authority to govern itself flows from its status as a sovereign entity (i.e., as a sovereign, a tribe possesses "inherent" powers of self-government which pre-date the United States government) just as the mode in which it exercises this power is dictated by the kind of society the tribe historically and contemporaneously is, i.e., a "tribal" society. By contrast, any other local governmental unit in this country exists only because it has received its power or "charter" from the state which in turn must be legally created by the Federal Government. With minor variations, all such units, whether city

or county, township or municipality, exercise their power in more or less the same manner. The lines and extent of authority are defined relatively clearly by the federalist system while membership and status within the community are defined politically on the basis of residence, property ownership, etc. In contrast, tribal membership closely follows cultural and racial lines.

These considerations are elementary, as is the obvious conclusion that tribal leaders, in order to function wisely and effectively, must be aware of the ramifications of their tribe's unique historical and legal status in the context of any given situation. For example, the complex jurisdictional relationship between the tribe, the state and the Federal Government must be understood by a tribal council before it can effectively define the jurisdiction to be exercised by the tribal court over civil and criminal cases. In an analogous sense, the council must have a firm idea of the extent of its power before it attempts to impose a taxation scheme, enacts a comprehensive land use zoning ordinance or tries to regulate the use of water on the reservation.

Historically, those considerations flowing from the tribes' unique legal status vis-a-vis the Federal Government (the trust relationship) in combination with the limited role of state governmental authority on reservations have always added an element of complexity for federal officials, private attorneys and others who have attempted to assist and advise tribal governments. This complexity is compounded by the activist nature of many tribal governments today. Twenty and thirty years ago tribes were being seriously threatened by the prevailing

termination policy and the primary efforts of tribal leaders were directed at protecting and consolidating their status. By contrast, we have seen within the last decade an increasingly active role being played by tribal leaders in attempts to exercise tribal governing powers to the fullest extent. The attitude held by such tribal officials is based on the recognition that if they do not act to govern themselves now to the fullest extent possible the danger is that such authority will be restricted by Congress or usurped by the states or both. In addition, tribal efforts in the area of economic development aimed at raising the standard of living on the reservations inevitably place demands on the tribes' governmental institutions.

A. Exercising Tribal Powers

It is precisely in the area of exercising tribal powers that the need of the tribes for counsel and technical assistance is greatest. This is an area of governmental policy and field of federal law which remains undeveloped with many basic questions still unsettled. The short answer to the question of why this is such an unsettled area is that with the great majority of tribes not asserting their powers in the past there has never been a need on the part of federal courts and agencies to define what the extent of such powers might be or what the jurisdictional relationships between tribe, state and Federal Government must be. But, because of such factors as the pressures to pursue economic development, a generally higher level of education among tribal council members, and an awareness of political agitation by many western states aimed at restricting or eliminating tribal self-government, a

great many Indian tribes find themselves in the difficult situation of trying to exercise their sovereign powers while not knowing the real nature or extent of them.

The Indian legal community has been steadily growing more aware of the kinds of problems raised by the situation outlined above. It has become apparent that a concerted effort by all members of the national Indian community is necessary to consolidate recent gains such as favorable Supreme Court decisions in the tax and jurisdictional areas, the sympathetic attitude of Congressional committees who have offered significant legislation during the last session of Congress, and a pliable administration in the Bureau of Indian Affairs (BIA). It is perhaps even more urgent that tactics and a strategy be developed to insure that disastrous test cases in the area of definition of tribal powers are not made a permanent part of the record. Another possibility which is just as important for Indian leaders to anticipate and prepare for is the political backlash generated by non-Indian interest groups who are disturbed to see Indian tribal governments begin to actually function as complete self-governing institutions. Coal developers, for example, can foresee as a logical consequence of an increased level of tribal self-government a curbing of their own ability to function without restraint on the reservations. Or, in the same vein, non-Indian cattlemen leasing trust lands are disturbed at the possibility of a tribe's imposing a licensing and taxing scheme, and so on.

B. Action-Research Project to Assess Tribal Governing Institutions - Rationale

In response, the Indian legal community, in cooperation with other segments of the Indian world, has a special responsibility to meet this growing challenge. However, as a prelude to devising specific strategies, we need to know much more about the nuts and bolts of tribal government. For example, we should have a good idea of the types of governing structures which are commonly used by the tribes, exactly how they are working, if they are working well - why, and if not - why not? We should analyze prior tribal efforts at economic development to ascertain what lessons might be learned. We could benefit by getting a comprehensive picture of that institution which is essential to the tribe's exercise of self-governing powers, i.e., the tribal court system. What is the present posture of tribal government and BIA relations on the reservation and how might this knowledge benefit us?

Unfortunately, but not surprisingly, this kind of information is simply not available to anyone with the need to familiarize himself with these questions. This is not to say that there are not a great many Indian leaders who are experts in tribal government in every sense of the word. Indeed, most tribes are fortunate enough to be able to point to at least several individuals who work with their tribe and are truly knowledgeable professionals. By the same token, many Indian lawyers and other professional people across the country who work with Indian tribes on a day-to-day basis are very capable and experienced in the field of exercising tribal powers. However, this body of knowledge and expertise

remains as a very personal and individual possession and, as such, is simply not communicable on a broad scale. There are no textual materials available in the field and even the very limited number of government reports, law review articles, etc., which have been published have not been able to treat the subject from a comprehensive point of view nor are such materials designed to give one a working knowledge of "tribal government".

Faced with this situation, which can be accurately characterized as a complete absence of available research data dealing with the subject matter of tribal government, we strongly felt that a start had to be made somewhere and the field research project which is the subject of this report was consequently initiated and organized.

C. Project Description

Briefly stated, the idea of the project was to recruit as many Indian law students as available funds would permit, assemble them for an orientation and training session to explain exactly how the project was to operate, secure the cooperation of tribal community people, and, after the completion of a field study on the reservations, reassemble the students and tribal representatives for an evaluation session. It was explained to the students that this was a comprehensive research project to assess the status of the participating tribal governments and thereby gain a national perspective on the subject. We intended that our research findings would be shared with those tribes and other Indian organizations. Another purpose of the project was to provide a meaningful,

educational experience for the students in order that they might be better equipped to eventually serve their tribes on a professional level. Indian lawyers cooperated by making visits to the students during the course of the summer. Some direction was provided by and contact was maintained with a central administrative office, but essentially the students were on their own during the field portion of the project.

In nearly every case the students had decided that they wanted to work on their own reservations since these were the communities they felt they knew best, could be most productive on, and had the most long-range interest in. Perhaps as a result of this approach, the tribal leaders in nearly every case were very receptive to the students' presence on the reservations and cooperated fully. The students were asked to perform an "objective and systematic evaluation of each tribal governing institution." In addition to performing this collective evaluation service, students were expected to assist the tribal government in formulating realistic and achievable remedial objectives. In order to give a structure and direction to the students' efforts, they were asked to focus their research on six issues or areas. These were spelled out in separate memoranda and questionnaires were sent to the students. The students then compiled "substantive research reports" in response. (Following this introductory section of the report, we will treat each issue separately by excerpting relevant parts of the explanatory memos and representative portions of the students' research reports.)

The methodology employed by the student field workers was simply

a process of observation, interviewing and consultation. Since each student as part of the plan would go to a different reservation, it was anticipated that there would be considerable variation from tribe to tribe. Constitutions differ from tribe to tribe as well as other mechanics of the government which are dictated not only by differences in custom and tradition but also by such factors as the availability of resources and personnel. Despite these understandable differences, we felt that the nature of the problems posed for many tribes had a sufficiently common base that as a result common recommendations and conclusions could be drawn as well as common strategies suggested.

If there was one unifying theme to our approach in spelling out a series of issues to be researched and attempting to gain a comprehensive picture of the status of tribal governments, it was the question of constitutional reform. In each instance, we asked students to evaluate whether or not the tribe's existing constitution was adequate in relation to those issues which were being researched, i.e., governmental structure, court systems, etc. In recent years, more and more tribal leaders have expressed a conviction that their tribal constitution, written in most cases in the years immediately following the 1934 Indian Reorganization Act, was simply out of date and no longer relevant to the tribe's needs. In survey form, then, we attempted to determine where particular constitutions were adequate or not - and if not, what recommendations might be made. It was particularly on this point that we suspected that common lessons could be learned despite tribal differences.

II. RESEARCH FOCUS POINTS

As pointed out in the preceeding section of this report, the research efforts of the students were focused around six separate issues which we identified and explained during the orientation session conducted prior to the field portion of the project. These particular areas were selected for several reasons. First of all, they appeared to us to be the critical areas which we must understand if we are to gain an accurate picture of the status of the governmental institutions of the participating tribes. Secondly, these issues could be considered separately from specific problems the tribes may be experiencing. While a tribal problem involving a jurisdictional question or protection of a natural resource right would understandably be interesting to the student and perhaps even be a point on which he could provide valuable research assistance, we expressly excluded such areas from the scope of the project. If one viewed the primary purpose of the project as the performance of an evaluation service for the participating tribes, research in such other areas would simply be outside the scope of the project. In addition, most of our researchers had only just completed their first year of law school and we were hesitant to suggest that they become involved in working on technical legal questions. This might prove frustrating to the students and to us as administrators since we did not have the back-up resources to provide assistance which would surely be necessary on these kinds of problems. However, we did make it clear to the students that they were certainly free to confer with tribal officials on these kinds of issues

and we would work with them in attempting to identify possible resource people with expertise in these kinds of problems for the tribes.

We include the following portion from one of our initial memos as additional explanation of the choice of the six issues around which our research efforts were focused.

TO: Student Researchers - Tribal Government Project

FROM: Alan Parker

SUBJ: Outline of substantive issues to be researched during field study

As we attempted to explain during the training session, our understanding of the project is that each student will submit an individual report to his own tribal government at the conclusion of the field portion of the project. Necessarily, this individual report will be geared to the particular problems confronting that tribal group, however, in addition to whatever particular problems the student may evaluate, we are asking each researcher to structure their analysis around the following key issues:

1) Tribal governing structure
2) Tribal court structure
3) Economic development of tribal resources and the tribal governing structure
4) Administration of governing services
5) Relationship of tribal government with BIA structure
6) Problems in application of Indian Civil Rights Act esp. in areas of membership and elections.

It is clear of course that there will be considerable overlap between these different areas. Nevertheless, our examination of the subject matter of tribal government, even though in survey fashion, seemed to reveal that these points are the major perspectives which must be taken to get an adequate picture of the whole subject. Recalling that our overall purpose is to arrive at an evaluation of the tribal governing structure in relation to the tribal constitution and related governing documents,

it should prove to be helpful to use the tribal constitution, etc., as a consistent frame of reference and as an organization device as we attempt our analysis on each of the above listed points.

I will be sending separate memos on each of these points setting out my ideas in more detail and listing some of the more obvious questions that should be addressed. As I mentioned during the training session, in addition to the "activity" reports we are asking you to send to the AILTP Office in Oakland, I will be asking for a more substantive report of your research findings every two weeks. Essentially this means a report on the first point, then the second point, etc., until we have gone through the complete list.

A. Tribal Governing Structure

The following is the initial memo to the students as the basis upon which they were to begin their research efforts. By attempting to analyze what the "governing structure" of each participating tribe was, we had hoped that the researchers would also be able to get an overall perspective on the tribal government. As noted in the memo, what we were seeking was more of a descriptive analysis than any kind of legal analysis. This approach was followed throughout the summer since we felt that to direct the students into a purely technical legal analysis would not only severely restrict the number of issues which we would be able to cover because of the time-consuming nature of the more detailed analysis but would also be beyond our capabilities since we had not geared up for this type of project. In summary, then, we were seeking a survey research effort with the result to be a broad but not detailed understanding of the tribe and the status of its governing institutions. It was our hope that the students could look forward to building upon this broad base of knowledge and that the collective report would then also constitute a broadly couched analytical statement.

TO: Student Researchers - Tribal Government Project

FROM: Alan Parker

RE: Tribal Governing Structure

We are purposefully asking you to make your initial report on the subject matter of the tribal governing structure since this is the one point that relates to all the other issues we will be examining. We anticipate that your research findings in this area will become more meaningful as the summer goes on and you get deeper into the study. Thus, by the time we are wrapping up the field portion of the project, you should be able to amplify this initial report.

We ask you to separate as much as possible the question of the structure which the tribe utilizes from considerations which relate more directly to our other points, such as, administration of governing services, economic development, etc. While you should feel free to regard your research in this area with some flexibility, I recommend that you begin by attempting to describe the organization of the tribal governing body in a descriptive vs. legally analytical manner. That is, how is the tribal council organized, what type of delegation of authority is there within the council, i.e., executive committee, membership committee, land assignment committee, etc.

Describe the organization of the tribal administration, i.e., who are the tribal employees, is there a personnel structure, etc.? What is the relationship between the tribal administration or what might be called the "executive vs. legislative branch of tribal government" and the tribal council or executive committee. What is the relationship of this actual structure to that which is established in the tribal constitution and to the manner in which it is defined in tribal ordinances or other relevant documents. As a frame of reference and for purposes of comparison attempt to define how the tribal structure puts into effect those tribal self-government powers enumerated in the tribal constitution and ordinances.

As a preliminary observation do you feel that the structure is (a) understood by most tribal officials and/or tribal members and (b) in their opinion, is it a satisfactory arrangement, if so why, if not, why not? (In their opinion, not necessarily yours.)

Have tribal or BIA officials been giving some thought to revision of tribal constitutions and governing structures? In what manner, for what reasons and with what results?

Note that later in the summer we will be addressing ourselves specifically to the questions of relationships with BIA, etc. For now we would like you to bear in mind as a theoretical consideration that an important distinction should be drawn between the tribal government as a government, responsive and responsible to all tribal members individually and collectively, and, tribal government as a business entity, concerned with maximum utilization of tribal resources for the corporate good. We have noted briefly that where the role of the tribe's government is impossibly mixed or blurred with its function as a business entity inherent difficulties are created. Ultimately, we may be asking what kinds of mechanisms could be set up to enable tribes to apply such a distinction and make it work and how should the federal government be responding to this problem if at all?

1. Student Reports

We include the following student reports as a compilation of our research findings on the issue of tribal governing structure. In some instances we have included the entire report, while in other cases we have simply excerpted portions of a report to illustrate the differences from tribe to tribe and as an indication of the common themes which do exist despite these differences.

a. Cheyenne-Arapaho: Oklahoma

Prepared by: David Ricketts-Kingfisher

I. DESCRIPTION

A. Constitution and By-Laws

The Constitution and By-Laws of the Cheyenne-Arapaho Tribes of Oklahoma is sanctioned by authority of the Thomas-Rogers Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat., 67). The constitution was recommended for approval August 11, 1937 by the Assistant Commissioner of Indian Affairs, and ratified September 18, 1937 by a vote of 542 to 417. There have since been eight amendments: Amendment I, ratified February 4, 1942; Amendments II and III, November 3, 1959; Amendments IV and V, November 7, 1961; and Amendments VI, VII, and VIII, October 12, 1971.

The constitution reflects general characteristics of other Indian Reorganization Act constitutions; i.e., detailed membership provisions, delineation of individual rights, description of the structure of the governing body and its powers, and a provision for amendments. The by-laws refer to duties of officers, oaths of office, meetings, quorum, and ratification.

B. Governing Institutions

There are fourteen (14) elected members, seven (7) Cheyenne and seven (7) Arapaho, referred to as Councilmen. In fact they comprise the Business Committee which is the governing body. From this committee, its members elect

the following officers: chairman, vice-chairman, secretary, treasurer, and sergeant-at-arms. From this committee sub-committees are established which are responsible for matters falling within the area of their concern. The current sub-committees are: Scholarship, Concho School Board, United Tribes, Land Resources, Finances, Economic Development Agency, and Hospital Board. There exists no executive management and the staff consists of a secretary and assistant secretary. Currently a Community Health Relations officer assists the Business Committee in tribal business. Proposals are regularly submitted in order to provide funding for additional administrative staff and to establish programs.

II. ANALYSIS

A. Amendments

There are four basic changes reflected in the eight amendments. Two represent an expansion of the requirements relating to participation in tribal affairs. The first enlarges the scope of the definition of membership to include many persons previously not considered Cheyenne or Arapaho. The second lowers the age requirement for voting and holding office from twenty-one (21) to eighteen (18). The most significant changes, however, reflect an alteration of the basic tribal political base and governing structure as sanctioned and recognized within the constitution. Most important is the elimination of the power of the traditional Cheyenne Chiefs and Headmen to select representatives from their districts. This provision is replaced with a popular vote system of selecting representatives. Further amendments incorporate this change throughout the constitution, i.e. elimination of traditional Cheyenne Chiefs and Headmen from the process of appointing persons to fill vacancies of previous appointments, and the decrease of representatives from twenty-eight (28) to fourteen (14).

Another change permits the Business Committee to designate the place and <u>time</u> of the annual general meeting. Previously the annual general meeting had a fixed date and only the place was alterable. This is significant in view of the fact that communications systems are not adequate to provide proper notice to a substantial portion of the tribes.

B. Current

There are few positive things that can be said in favor of the current constitution as to its capacity to serve adequately as the foundation document of an operative

and responsive governing institution. The deficiencies are numerous.

Immediately recognizable is the lack of reference to procedures which define the mechanisms by which the governing body functions. For example, there is no mention of ordinances or resolutions. There is also no reference to the authority relationships that these actions would have to one another.

This situation complicates further the validity of the actions that are thus taken to implement grants of power sanctioned within the constitution. For example, the governing body's power to determine procedures for elections, even to the point of designating districts and apportionments, has too flexible a quality to withstand an attack from a suit filed pursuant to Title II of the 1968 Indian Civil Rights Act (hereinafter referred to as ICRA). There is no incorporation of ICRA provisions under Article IV--Individual Rights and Present Services, even though Amendments VI through VIII were ratified October 12, 1971.

There are no provisions concerning removal or recall; thus, in effect, removing any continuous sanction of accountability of a representative to his electorate. In view of current litigation trends under the ICRA; the lack of permanent election mechanisms, such as an election ordinance or a provision for an election board and its requisite grant of authority, would render elections under the constitution legally vulnerable.

There is no provision which authorizes and/or describes the powers and function of executive personnel such as a manager or director. There are also no provisions which define the tribes' power over the expenditure of its funds by the Bureau of Indian Affairs (hereinafter referred to as BIA). Such provisions would begin to define the fiduciary responsibilities between the tribe and the BIA.

More generally, the constitution concentrates and vests tremendous power into the governing body, the Business Committee; yet lacks the sanctions to control its actions, i.e. through removal, recall, or accountability as discussed previously. There is also no delineation of the role of a general membership meeting and its relationship to the Business Committee. This might not be such a problem when perceiving the Cheyenne-Arapaho Tribes of Oklahoma as a business corporation, because the objectives of a business corporation can be defined rather narrowly. This allows the state of incorporation to regulate statutorily

the fiduciary responsibilities of the board to the corporate membership. Such regulation is applied rather uniformly, and hence, corporate by-laws need not provide such detailed regulations.

The fiction of this analogy, however, should be obvious--tribes are more than business enterprises. For example, the preamble of the Cheyenne-Arapaho Constitution refers to "all matters affecting the tribes" and "general welfare of ourselves and our posterity". Further, the uniqueness of each tribe establishes the potential of widely varying objectives which require more "tailor made" regulations. These regulations must somehow be provided for within the constitution itself.

Another problem is the lack of a design which would establish some type of constitutional balance among the political powers recognized within the constitution. In effect, the electorate cedes its powers for two years to the Business Committee, rather than delegating it. After this occurs, there is no distinction between an entity which performs or executes business and one which determines the policies and scope of such execution. They are one and the same.

In summary, a historical analysis of the period of the drafting, approval, and ratification of constitutions such as this, reveals another dark chapter in Federal and Indian legal relations. Too often, inadequate constitutions were drafted by non-Indians, misrepresented to the traditional leadership, approved, ratified, and eventually amended to displace the long established leadership from "legal" recognition.

The double evil was the replacement of a traditional structure with a structure predicated on erroneous assumptions concerning the tribes' true situation and its ability to respond to the new structure. The result was expectedly an inadequate mechanism from which to attempt to resolve the people's real and various problems. This is the current situation with which the Cheyenne-Arapaho Tribes of Oklahoma are confronted.

III. PROPOSED REVISION

A. Amendments and Status

At a special meeting held on April 4, 1970, a resolution was adopted pursuant to which a Constitutional Commission was established. The purpose of the commission

was to determine the desires of tribal members and to propose revisions or amendments to the constitution. These amendments were submitted to the annual general meeting of October 3, 1970, at which time a General Council Resolution was adopted, approving several amendments and revisions.

The substance of the most significant of the proposed changes are as follows: the governing body is changed from the Business Committee to the Tribal Council, with procedures of action and enumeration of powers detailed; delegation of specific powers to the Business Committee is provided for; provisions for employing a management staff are added; provisions for establishing an Election Board and election procedures are added, such as a description of district; specific BIA and tribal relationships are defined; a limitation is placed on the Business Committee's power to expend money from non-trust income; and there is an attempt to return the Tribal Chiefs back into the governing structure on a consultation basis.

B. Description of proposed revisions

Article I--Definition of Terms, ties together and controls the entire document by providing a basic reference plane. Four separate entities are defined: Tribal Council, Business Committee, Election Board, and the Business Manager. Article III incorporates by reference the protections conferred by Title II of the ICRA. Article IV--Council and Committee Authorities, describes the relationship and powers of the Tribal Council and the Business Committee. Section One details the scope of authority of the Tribal Council and lists specific matters, such as: approval of annual budget; surface leases or easements of tribal land in excess of five (5) years; legal counsel contracts; claims and recovery of land; membership ordinances and/or resolutions; and alteration of district boundaries. Aside from the reservation of these specific powers, Section Two grants to the Business Committee all others, not otherwise restricted by the constitution. Section Three restricts expenditure and disbursement of tribal funds by the Business Committee and the BIA to the annually approved Tribal Council budget. Section Four defines procedure of actions authorized by the Tribal Council and the Business Committee, i.e. duly recorded certified ordinances or resolutions.

C. Analysis

The proposed amendments address themselves to nearly every unresolved issue and inadequacy of the currently existing constitution. It is thoroughly adequate in

modernizing the governing system of the Cheyenne-Arapaho Tribes. Significant is the separation of responsibilities among various institutions of the governing system. The fundamental governing body, the Tribal Council, consisting of the eligible electorate, functions to determine and to approve policy, and it reserves specific powers which are defined in detail. The procedural technique to implement and validate Tribal Council decisions is the requirement of a quorum.

The Business Committee is elected; and beyond its specific constitutionally vested power, it is delegated general power by a constitutional grant, subject to limitations and restrictions from the Tribal Council. The Tribal Council meets annually and the Business Committee monthly. The Business Committee functions primarily as an executive authority. The actual execution of tribal business is delegated to a full-time management staff.

Another entity is the Election Board which is vested with constitutional power separate from either the Tribal Council or the Business Committee. Since there can be no dual service on the Election Board and the Business Committee, structurally, a conflict of interest is removed. There are also provisions which require Business Committee compliance with Election Board policies and procedures for action in case of non-compliance.

This last procedure involves the BIA superintendent, thus, providing an administrative remedy to any usurpation of power by the Business Committee over the Election Board. This appears to be an attempt to maximize the political neutrality of the Election Board while retaining the administrative potency of its regulations in the case of non-compliance. This procedure establishes reviewable due process standards, invokes minimal BIA power, and provides a dimension of enforcement which the United States Supreme Court might currently envy.

A further reference to the BIA is by constitutionally limiting the authorized disbursement of tribal funds to the approved Tribal Council budget. This in effect protects tribal funds by legally defining an element of the BIA's fiduciary responsibility to the tribes.

In general, all areas are well defined as to procedures, implementation, and relationships among various provisions. For example, the process establishing legality of actions is defined in detail, i.e. petitions, resolutions, Robert's Rules, etc. Election districts,

Business Committee elections conducted by mail, staggering of terms, etc. render a sophisticated, yet relatively uncomplicated, constitutional foundation from which future policies and regulations can be derived.

Criticism of the proposed amended constitution will lie in two areas, and perhaps these are minor. Article III, Section One incorporates by reference Title II of the ICRA. Legally this is appropriate. However, the interpretation and standards governing ICRA's application to "substantive due process" will be totally controlled from outside the constitution. In other words, the constitution retains no power over the construction of the clauses of the ICRA in any specific form. On the other hand, the constitution is more than sufficient to validate the legality of tribal actions under "procedural due process" standards. In view of the fact that the Cheyenne-Arapaho Tribes have no constitutionally recognized court system, the ICRA incorporation and lack of resiliant power should be a negligent problem and perhaps should be ignored. It is only referred to in order to draw attention to the scope of the ICRA.

b. Chippewa-Cree: Montana

Prepared by: Robert E. La Fountain

The governing body at Rocky Boy Reservation in Montana is the Business Committee, which is composed of a Chairman, Vice-Chairman, and 7 additional Committee members. All Committee Members are elected to four-year terms (staggered, 5 and 4 every 2 years). The Chairman presides over meetings and exercises authority the Business Committee delegates to him. He appears to act much like a manager. The Vice-Chairman is selected from among the remaining 8 members. He presides at meetings when the Chairman is absent.

The Chairman gets an annual salary of $10,000. The Vice-Chairman gets $35 for each day he acts as Chairman (meetings and whenever the Chairman is not available for day-to-day tribal business affairs). The 7 other Committee Members get no salary but do get $10 per day for each meeting attended.

The Tribe employs, by contract, a Tribal Secretary and a Tribal Treasurer. The functions of these are to conduct tribal correspondence; keep minutes of meetings; send out and receive applications, petitions and other documents relevant to Tribal affairs; to keep records (Secretary); and to pay out per diem; keep money records; other functions relevant to the position.

The Business Committee delegates responsibilities to about eight different sub-committees. They are: The Administrative and finance Committee; The Housing Authority; the Health Committee; the Census Committee; Law and Order Committee; Land Resources Committee; Dry Forks Farm Corporation; and the Welfare Committee.

The Business Committee attempts to insure that a regular Business Committee member sits on each of these sub-committees. Each of these sub-committees is comprised of from 3-5 members (determined by the current problem situation in the particular subject area).

The sub-committees have no final authority. They can only make recommendations after viewing and analyzing a problem. The final word remains in the Business Committee, which meets on the last Thursday of each month.

The Tribe hires a small number of administrative personnel. The salary of the Chairman, the Vice-Chairman, the Secretary, the Treasurer, a Range Rider (none at present), a cook and waitresses (a supplemental amount) comes out of tribal funds. The Tribe has a contract with the BIA for funds for two tribal police officers and two more are paid directly by BIA. The Chief Judge of the Tribal Court and the one existing Associate Judge are also BIA paid.

A number of other Indian people on the reservation are under supervision of Tribal people (BIA employed) and some work under other federal programs and are federally funded.

The governing structure is organized in a manner pretty close to that established by the Tribal Constitution. There are a few differences, however. The major difference is that the tribe hires a Tribal Secretary and a Tribal Treasurer while the Constitution seems to provide for one person for that combined purpose. Any other differences appear to be minor and would not appear to give rise to any inconsistency or conflict with the Constitution.

The powers of the Business Committee are defined generally in a list of enumerated powers. These include

power to negotiate with other governments on behalf of the tribe; to employ legal counsel; power over disposition and use of tribal lands and assets; power to manage economic affairs; power to charter subordinate organizations for economic purposes; power to appropriate tribal funds for tribal governmental operations; power to levy taxes and license fees upon members; power to enact ordinances; power to encourage and foster Indian Tribal culture, arts, etc.; power to govern hunting and fishing on the reservation; power to delegate powers to boards or associations on the reservation; and power to enact special ordinances such as a comprehensive law and order code.

On the basis of these general enumerated powers the Business Committee enacts ordinances when a need is presented to that committee for such action. Most often, however, it appears that most of those enumerated powers are never exercised unless a current pressing situation prompts such an exercise of power. Even then it is not always clear what the extent of the power to be exercised actually is. As a result many of the powers are probably exercised to a lesser extent than they could be. Also the powers exercisable by the whole committee or by sub-committees or by the Chairman on his own are not clear-cut. And this lack of clarity undoubtedly results in a lack of action by the tribal governing body since it is conceivable that these groups often may expect the other groups or the Chairman to exercise the power. And the Chairman may fail to act because he doesn't know to what extent he can act.

This lack of specific duties of the Chairman and the Committee and the lack of clarity as to who shall exercise what powers to what extent is quite apparent to the Rocky Boy Tribal officials and to the tribal members who take an interest in tribal government affairs. It seems that tribal officials understand the structure quite well as a structure but because of the lack of clarity as to the powers and how to carry them out effectively the Tribal officials don't know how to make that existing structure most effective.

Tribal members appear to take little interest in government affairs and those few who do take such interest encounter the same problem of not understanding the government's powers and how the tribal government could be more effective under the Chairman-Committee system.

Most tribal officials and members familiar with the government structure apparently do not feel that the existing structure is a satisfactory arrangement. They point out that there is no plan of operation, guidelines to help the

Committee carry out its powers. They note the lack of defined and clear powers of the tribal officials and the Committee. The duties of the Chairman and the Committee are not specific enough. They note that very little gets done by the governing structure unless the Chairman or another official acts on his own or unless individuals of the Committee or of the governing staff act on their own to get things done. (This problem may be compounded by the fact that the Committee is required to meet only once per month, although special meetings may be called.) And many feel the existence of such a structure as the Chairman-Committee governing body structure gives rise to and encourages a problem of cliques on the Committee (voting in blocks, family favoritism, nepotism).

Most feel the existing type of structure could be more effective and would become more acceptable and satisfactory if the powers and duties of the Committee and tribal officials (especially the Chairman) were more adequately defined and more specific. They appreciate the ambition of certain past and present officials who took the initiative and did things on their own, perhaps even without power to do so, to improve the tribe's economic, social, and political situation.

The tribal officials at Rocky Boy sense a need for revision of the tribal Constitution and governing structure. They feel revision and modification is necessary in order for the tribe to progess socially, politically, culturally, and economically. This need has been apparent to the tribal people for quite some time. In September of 1971 through a Montana State Department of Planning and Economic Development grant the tribe developed a Comprehensive Development Plan. This plan noted the lack of progress by the tribe in almost all areas of economic, social, and political development. A plan for fulfilling existing and current needs was incorporated and recommended solutions were noted. It appears that some of the recommendations were heeded because some development has occurred since 1971 but it also appears that the plan at this point has not been greatly successful because no great amount of development has occurred.

A more recent Chippewa Cree Tribal Government Development Plan has been submitted to the Business Committee members for their consideration but no action has been taken on it yet.

As expressed before, individual tribal members and individual Committee members have expressed a need to revise the present governing structure and the Constitution. But as one tribal official noted, there's plenty of thought about

revision but very little action. As this official noted, the tribal Constitution was amended in 1973 but many of the points that need revision were apparently not considered then (for example: the powers of the officials are still stated generally in the present Constitution). A feeling of need for further revision is apparent!

A number of tribal members and officials feel the BIA could do more toward helping the tribe improve the governing structure. They feel BIA help in this respect would be consistent with the U. S. concept of helping the tribes become self-determining. It appears that the BIA would rather leave such tribal problems to the tribe to solve. However, it does appear that BIA officials would be available for technical assistance they may be capable of giving with respect to improving the tribal governing structure.

c. Oneida: Wisconsin

Prepared by: Gerald Hill

INTRODUCTION

The actual structure of the Tribal Government in Oneida follows the Constitution and By-laws. This current Constitution and By-laws was approved Dec. 21, 1936. It has been amended June 15, 1939, Aug. 25, 1969, and Nov. 28, 1969.

DISCUSSION

The Tribal Business Committee is organized and selected according to the manner stated in the Constitution. At least one council member expressed an opinion as to the unwiseness of having the nine elected officials elected at the same time, suggesting that staggered terms would probably improve continuity.

Theoretically, staggered terms would preserve the governmental continuity. However, in actual operation the tribal officials continue in the government in various capacities. For example, the Tribal Chairman is now serving for a second term. The Vice-Chairman is a past chairman. And the Business Manager, who is a council member, is a thrice elected past chairman. It seems unlikely that the experienced elected personnel will be changed totally at a given election.

Delegation of Authority

The Business Committee may be delegated authority by the General Tribal Council under the enumerated powers set forth in Art. IV, Sec. 1. This in fact occurs. Each Business Committee member is delegated the responsibility to work with the various service committees and programs. This list is included in the organizational chart. As reflected in the attached memorandum, there is occasional misunderstanding of the roles in the chain of delegation. This is perhaps reflective of the need for revision of Constitution and By-laws. It is also reflective of probably the most substantial problem facing the governing structure.

There is no apparent challenge to personal integrity within the governing structure but it appears that there are personality problems. Yet, in view of problems on other reservations, the Oneida Tribe seems to have a sound governing structure and attitude of responsibility which is encouraging.

The delegation of authority to the Business Committee, Membership Committee, and other Committees is also determined by the General Tribal Constitution and is actually carried out as set out in the Constitution and By-laws.

Organization of Tribal Administration

The Tribal Organization operates as outlined in the organizational chart (see encl.). There are only three permanent employees of the Tribe. They are Civic Center Building Manager, the assistant, and the janitor. Although there are others employed who work with the tribe, their positions are funded by various governmental agencies. These are contained in the enclosure.

The legislative branch of the Oneida Tribe is the General Council who enact ordinances and resolutions which are in turn implemented by elected officials and/or designated committees. This relation is defined in the Constitution and By-laws and so actually operates.

Resolutions and ordinances may be asked for by the Tribal Chairman or other elected official or presented for approval by any member of the General Council.

It has been expressed that resolutions and ordinances are not always understood by the people in the areas in which they are to be implemented and, therefore, problems may arise in the administration of the government. For example, although the governmental procedures may be understood by the quorum, and officials who pass them, a particular committee member may not understand the need for any procedural change. It would appear that this is a problem in education but it does not seem that any simple solution is available.

The self-governing powers established by the Constitution are put into effect by ordinances and resolutions by the General Council. These may be enacted at any general council meeting.

The tribal structure is understood by the personnel in the governing structure. But, a feeling that procedural matters are not understood by the general membership of the tribe. It seems fair to assume that this would parallel the number of persons who actually participate in the governmental operation.

The tribal structure is felt to be in need of revision by the elected officials. And, as previously stated, since

it is not generally understood by the membership, the structure, while it does operate properly according to the existing constitution, the current structure is far from wholly satisfactory.

There is a general agreement that revision of the structure and constitution is needed but no agreement on what form this should take. In the past a revision has been twice offered but insufficient participation by the General Council was experienced. Currently, a constitutional revision is being studied.

CONCLUSION

The Oneida Tribal Government seems to be responsive and responsible to the general tribal membership as can be expected under the existing Constitition and By-laws. Change in the governing structure as a pressing need is an almost universal conclusion but the means and manner for implementing such change is not agreed upon. There is currently a study on proposed revisions and updating of the Oneida Tribal Constitution and By-laws. In the past, two revised constitutions have been offered and fell short of passing by the General Tribal Council which indicates a complacent attitude toward change which is not surprising.

Although the utilization of tribal sources is inextricably tied to the governing structure, the business management is distinguished. The distinction is recognized by the chartering of separate entities for economic developments and delegation of responsibility to the various business committees.

The Oneida Constitution of 1866 reflects a governing structure which was more sovereign in that criminal and civil matters were still handled by the tribe. Since Wisconsin is a P.L. 280 state, these matters are now under state jurisdiction but the tribe understands these attributes should eventually be reassumed by the tribe.

Although change has been slow in the past as far as the governing structure is concerned the present tribal atmosphere seems ready for a change as soon as an agreeable revision can be presented.

d. Pueblo of Laguna: New Mexico

Prepared by: Ron Solimon

TRIBAL GOVERNING STRUCTURE

The Tribal council is composed of the following elected officials: Governor, First Lieutenant Governor; Head Fiscale; First Fiscale; Second Fiscale; Treasurer; Secretary; Interpreter; and representatives from the six recognized villages of the Pueblo of Laguna. The officials, except the village representatives, are considered the Staff Officers who are in effect are the Executive Cabinet. The line of authority is given seriately during the absence of the Governor.

The Governor acts as the chairman of the council meeting where an agenda, outlining the topics for discussion and consideration, is followed. The topics range from investment planning to the hiring and firing of tribal employees. The Council acts as a business enterprise, social services agency, legislature, personnel department, et cetera. The above roles indicate only those roles that I have seen the Council fill thus far in my research and observation.

Council meetings are held once a week to consider the business of the tribe and sometimes twice a week when matters of urgency arise. An average of ten topics for discussion and consideration appear on the agenda, but the number of items discussed and decided on vary with the complexity of issues. Thereare no formal rules governing the conduct and procedures of tribal council meetings or the councilmen. The only guidelines are briefly set out in the tribal constitution and bylaws.

Every village is represented on the Staff (Executive Branch) by at least one individual, and could be represented by as many as four individuals. Thus, one village could be represented on Council by six individuals. Despite the possibility of antagonism, there is no history of such an election. There are a total of 21 voting members in the Tribal Council (6 villages, with two representatives for a total of 12; and 9 Staff Officers).

ORGANIZATION OF TRIBAL ADMINISTRATION

The Council has 11 Standing Committees which are made up of people from the Council, but the majority of the members are from the community. The standing Committees are: Budget Committee; Community Health Representative

Committee; Laguna Elementary Advisory Board; Scholarship Committee; Land Claims Committee; Finance and Planning Committee; Board of Trustees (Minor's Trust Account); and the Membership Committee. The Planning Commission is presently funded by the Economic Development Administration, and is charged with developing plans, writing proposals and negotiating with federal agencies for the overall economic development of the Pueblo of Laguna. Their task is perhaps the lifeline of the Tribe's future. Their authority to conduct negotiations on behalf of the Pueblo has recently been extended so as to prevent any unnecessary delays in obtaining funding. Prior to obtaining this extension of authority, the Committee had limited authority in relationship to its tasks and working time. Basically, the standing committees have authority until their decisions are reviewed by the Tribal Council at which point the Council is in complete control. Nothing is done without the final review and approval of Council.

TRIBAL PERSONNEL STRUCTURE

The majority of the tribal employees are engaged in static positions. There is no overall personnel structure which would allow for advancement or training in an employee's area of work. In relation to the administrations of enterprises with as many assets and undertakings as the Pueblo of Laguna, the present personnel structure is outdated and in need of a complete revamping so as to promote greater efficiency in congruence with the present workload and plans for future economic development. There are no formal policies and guidelines in the various components of tribal administration. There is a Tribal Employee's Handbook, but it is general in nature and offers no explicit description of the particular job or tasks to be performed. Coupled with the annual election of tribal officials, the lack of policies deters continuity in the administration of tribal affairs. The directors and staffs of the various government programs are not employees of the Tribe. The directors of the various federal programs are hired by the Tribal Council, but the Council does not maintain direct supervisory control over the activities of the various programs. The Council has discussed the hiring of a Program Officer, who would coordinate the efforts of these programs and insure the direct input of Council. The liaison officer would increase the communication between Council and the Federal Programs. This position, although badly needed, has not been filled at present. An interesting fact is that a tribal employee such as a secretary/clerk carrying on the exact tasks of an employee in a federally funded program may be earning from one to two thousand dollars less per year than the employee

in the federally funded program. The discrepancy in executive salaries is even greater ($4,000-$5,000). The reason for these discrepancies is the control factor of the tribal council over their immediate administration and the quasi-independence of the federally funded programs.

RELATIONSHIP BETWEEN THE STAFF OFFICERS AND TRIBAL COUNCIL

The relationship between the tribal council and the staff officers is immediate and interdependent. The concept of separation is not applied in the Laguna Pueblo system of government. The Governor only votes in cases of a tie vote. In effect, the Governor, Secretary, and Treasurer act as discussion leaders who explain facts of the various topics under consideration and guide the Council in their decision making process.

ACTUAL STRUCTURE VS. DOCUMENTED STRUCTURE

The self-government powers enumerated in the Tribal Constitution and Ordinance are carried on to the very extent that they are written. The powers and duties outlined in the Constitution are general and include many areas. In effect, the Council acts as a department of health, education and welfare, department of labor, department of justice, and other agencies designated to promote the general well-being of tribal members. The structure is understood by Council members and is for the most part respected by tribal members. The objections to the present system lie in the slowness of processing business through the tribal council. This slowness can be attributed to the bureaucratic red tape that the Council must wade through prior to making a definitive decision. The Federal Program proposal process retards the action that tribal council can take. Also, the outside consultants that the Tribe hires have to consult with the Area Office on certain matters. A major bottleneck appears in the requirement that the Secretary of the Interior approve many of the decisions and activities that Council engages in. The past is scarred with hasty decisions which were definitely out of the careful, analytical character that is the style of many Indian Councils. Today, members of Council are careful to understand the substance of every issue. Outsiders are quick to criticize the process, but after a subjective look at the backgrounds of the Councilmen and the magnitude and complexities of the decisions they have to make, one tends to have a different perspective.

PLANS FOR REVISION OF THE TRIBAL CONSTITUTION

Under previous tribal administrations there was a movement to revise the 1958 Constitution. A revised and amended constitution has been pending before the Council, but other urgent matters have superseded the consideration of the revised and amended constitution. It should be noted that Laguna Pueblo had a written Constitution at the turn of the century (1908). The 1908 Constitution was revised and amended in the 1940's and the Constitution was ratified and approved in 1949. Again, in the mid-1950's there was a need to revise and amend the 1949 Constitution. Out of this third revision came the 1958 Constitution which the Pueblo of Laguna presently abides by. The latest revision was accomplished by means of a committee comprised of members of the Tribal Membership Committee, consultants who had expertise in the revision of tribal constitutions, a representative of the Secretary of the Interior, and tribal attorneys. The revised and amended constitution has already drawn some criticism, and will probably not be approved during this administration. The urgency of approval is dependent on the attitude of the particular administration. This is the case in many matters of importance.

COMMENTS

A more concise report containing a subjective analysis will be submitted to the Tribal Council. The strong points and weak points of the tribal governing structure will be discussed in that report.

e. Papago: Arizona

Prepared by: Hilda Manuel

The legal foundation of the Papago Tribe is the constitution and its by-laws. The constitution was adopted under the Indian Reorganization Act of 1934, section 16. The members ratified the constitution and by-laws on December 12, 1936, with a vote of 1,340 for and 580 against, in an election called by the Secretary of the Interior.

The governing body consists of a council called the Papago Council. The Papago Council is elected from eleven districts, each district having two representatives. The elected council elects from its membership a chairman, vice-chairman, secretary and treasurer. The chairman has a dual position of presiding officer of the Papago Council and head of the tribal administration. As head of the tribal administration, he has authority to supervise and direct all tribal administration employees. The vice-chairman acts as the second head of the tribal administration. He becomes more of a public relations man, usually travelling promoting the goals of the Tribe. The secretary is under the direct supervision of the chairman and takes charge of all his appointments and schedules. The secretarial position is an authorized position in the constitution, and thus his duties are set forth in the by-laws, article I, sec. 3. The treasurer also under the supervision of the chairman receives and accounts for all tribal funds as directed by the chairman and the Council. The description and qualifications of each of these positions is set forth in the Papago Handbook, 1973.

In addition to the two elected representatives, each district has its own district council. The district council consists of members representing the various villages on the reservation. The recent poll showed as many as twenty councilmen and not less than five. Included within these numbers are the alternates to the district council.

The district councils are independent from the Papago Council, and autonomous in their policy decisions affecting their particular village. The only time the Papago Council intervenes is when a district decision affects one or more district. Article IV, section 3, says: "each district shall manage its own local affairs ... but any matters involving more than one district shall be decided by the Papago Council." By the same token several districts are financially well off (see Sif Oidak mining income). With

the current development of mining activities, districts within the exploration areas receive considerable revenue from the leases. At the present time revenues received from development activity is divided equally between the Tribe and that particular district. Since the potentials for deposits of ore are not known, it seems probable that not all areas of the reservation have such deposits. Therefore, many districts are not able to generate as much income as others. This has resulted in some districts being very powerful politically and financially. In many instances, the elected councilman from that particular district will also be a councilman for the district council. This in essence gives that district power and control over the Papago Council. Some sort of revenue sharing is necessary so that districts not benefiting directly from mining leases will share in the revenues.

This suggestion would only follow the provision in the constitution, Article VIII, section 5, which says: "Inasmuch as the land is held in common by the Papago people"; or even yet, Article VI; section 2, which says: "all members of the Papago Tribe shall be given equal opportunity to participate in the economic resources of the Tribe." These provisions can be construed to mean that everyone should have a share of the revenue. Nonetheless, this is a hotly disputed and unresolved issue.

Presently, the officials of the Tribe, i.e., chairman, etc., are elected from within the membership of the elected representatives to the Papago Council. However, in light of the one-man, one-vote theme of the Indian Civil Rights Act of 1968, the solicitor strongly suggested to the Papago Council a new alternative. The Council decided to revise the constitution, and a committee was formed to carry out the task. It has been over three years since the committee first drafted a revised constitution. There have been three drafts to date and latest has been given approval by the solicitor in Phoenix.

The acceptable alternative to the present district method was weighted voting, under which each councilman is accorded voting strength reflecting the share of population residing in his district. This method appeared more practical than the suggested method of reapportionment. Reapportioning would have caused considerable dispute in light of the fact that certain districts do receive mining royalties, and this would mean money to people not from that particular district originally. Along the same lines, the officials of the Tribe will be elected by popular vote. Accordingly, there have been no revised election procedures

written for the election of the officials or the councilmen. The last ordinance was enacted in 1971.

The term of office for the elected officials is one year. Everyone agrees that the term is too short, yet there has been no attempt at remedying the problem. The shortness of the term leaves the officials ineffective in any endeavors and lame ducks for future plans. The shortness of the term creates other problems. For example, the chairman's role is not well defined and, as a result, virtually no decision-making power is delegated to him. He becomes a sitting duck for all critics because he cannot perform without the approval of the Council. The Council considers all issues and decides the course of action to be taken. This becomes an impediment to the Council's ability as well as the chairman's. As the responsibilities increase the Council will in turn become sitting ducks for bad decisions or hasty decisions. The revised constitution does not begin to alleviate this problem except to propose a four year term for the elected officials. The term for the councilmen, which is two years, remains the same.

Powers of the Papago Council

The powers of the Council subject to the Secretary's review of approval are typical of all ITA constitutions. That is, control of all tribal trust monies, maintenance of law and order, regulation and licensing of non-Indians doing business on the reservation, hiring of legal council, etc. This illustrates how the constitution actually increased federal control over the tribal government. Despite the fact that certain rights and powers were confirmed by the constitution, the formality of having someone outside the tribal government overseeing is enough to show the shortcomings of the IRA and the constitution.

And, of course, the everlasting problem of inadequate filing and bookkeeping systems. While I was there most of the tribal documents were boxed and stacked along the walls of the tribal administration building. Along the same lines, the tribal staff is largely involved in increased tribal programs, which takes them away from filing and keeping track of materials. The entire staff of the tribal administration reports to the Chairman, which takes more of his time and decreases his effectiveness. There is no formalized structure to guide its responsibilities.

Probably the best solution is to start fresh. That is, get a revised constitution tailored to the needs and goals

of the Papago people. The next step is to motivate and train people in the areas needing expertise. This all calls for a comprehensive planning program developed according to the capabilities of the Tribal government and the people as a whole. This will mean taking the advice and knowledge of younger Papagos who have the education but who lack the experience. In other words, the older councilmen will have to step aside and take under their wings the younger Papagos for a long journey into the future.

f. Pueblo of Santa Clara: New Mexico

Prepared by: Jody N. Folwell

Tribal Governing Structure

The constitution of Santa Clara was written in 1935 and approved in 1936 by the Secretary of Interior, and amended 19 , making the constitution of Santa Clara somewhat antiquated and in certain instances useless. The constitution of Santa Clara is rarely used by the tribal council except for the determination of membership, tribal elections, impeachment of staff officers and the empowering of jurisdictional rights. Thus, the tribal council's actions on most issues are based on traditional precedent, custom and considerations of public welfare.

The Santa Clara Pueblo Council consists of fourteen members who are trusted to represent the diversified interests of several political groups and the general populace of the pueblo. From the two diversified political groups smaller political faction groups have emerged. The political factions select the staff officers who are then consensually elected by the general populace, eighteen years and over. The staff officers are in office for a period of one year.

The council is composed of the following elected officers: governor, lieutenant governor, secretary, treasurer, interpreter, sheriff, and eight selected faction representatives.

The governor is the coordinator or executor of the tribe, his responsibilities are extensive but his decisional powers are limited by the council and faction representatives. The pueblo governor's duties under the constitution consist of enforcing the laws of the pueblo: civil or criminal, written or unwritten. The governor has the authority traditionally or constitutionally to oppose or approve of policies promulgated by the council. The governor does not have voting rights, unless there is a tie, although his verbal comments to the issues are stimulating and effective and at times may be considered an implied voting power.

Council meetings are generally held once a week unless urgent matters come before the council. The tribal council members consider daily problems, contracts, proposals, business matters, promulgation of ordinances, and personnel policies. The council does not have any written directives for conducting council meetings; traditional procedures are followed. The governor presides over the council meetings, presenting the issues as to the importance of each. The coverage of issues at each council meeting varies with the agenda.

Each council member is given a time period to give his verbal opinion on the rising issues. The council then verbally votes on the final decision based upon the governor's recommendations.

Tribal Personnel Structure

There are only two major administrative positions in Santa Clara: Community Services and Social Services. The Community Service Director has the task of developing business plans, writing law and order proposals and negotiating with federal and state agencies. The Social Service Director has the authority to make decisions concerning social service contracts with federal agencies, regulating social policies and maintaining adult education programs. Both of these agencies are funded by HEW. The hiring of both administrative and lower staff positions is made by the tribal council.

Both directorships, Community Services and Social Services, were implemented to start and finalize the present personnel

structure. The other departments in the organizational chart have not been developed into viable organizations as of this date. The tribal council with the assistance of these two departments, Community Services and Social Services are negotiating with federal and state agencies and private foundations to acquire funds required to finalize the operation of all the departments on the tribal organizational chart.

The relations of the tribal council and administrative staff are contingent and interdependent. There is no apparent independence of the administrative staff from the council.

Revision of Tribal Constitution

The tribal council at the present does not intend to revise or amend their constitution until the Civil Rights Act has been amended. The tribal council along with other New Mexico pueblos has requested of the State Legislation that a consent clause be placed within the 1968 Civil Rights Act. The consent clause would give the pueblos the option of adopting the Civil Rights Act as it is or denying it in its entirety.

The tribal council members overall are satisfied with their constitution and by-laws even though they are outmoded. The tribal council's solution to the conflicts and limitations that arise from the constitution is to pass resolutions. The resolutions are promulgated to clarify the undefined terms or grant authorization to the council for their actions.

The council members and administrative staff have a general understanding of the tribal organizational structure and the terms of the constitution and by-laws.

Recommendations

1. Through the viability of the present new administrative structure and policies, Santa Clara will need future counseling on the development of new programs and institutions, counseling on contracting procedures, and counseling on business management techniques for the business enterprises being formulated.

2. Funds should be acquired to hire an expert for program planning in the areas of natural resources: water, timber, minerals and geo-thermal power.

3. Provide adequate funding for personnel under IHS, Social Services and Community Services.

4. The acquisition of controlling BIA services and related BIA programs.

5. The institution of committees or commissions to oversee federal programs.

g. Cherokee Nation: Oklahoma

Prepared by: Robert Lowery

The governing structure of the Cherokee Nation of Okalahoma is centered, both legally and politically, around the office of Principal Chief. This has been brought about by successive acts of Congress which culminated in the Act of 1906 and have left the Cherokee Nation of Oklahoma in a state of termination. Without going deep into historical background, it is enough to state that the office of Principal Chief is where the legal authority and responsibility rests with the Cherokee Nation of Oklahoma. Up until 1971, the Office of Principal Chief was appointed by the government of the United States. Since that time, However, it has been filled by popular election. The present Principal Chief, W. W. Keeler, was appointed first by President Truman in 1949 and then reappointed in 1954 when that power was given to the Secretary of the Interior. When the election by popular vote was finally passed by Congress in 1971 for the Five Civilized Tribes he was elected to serve for a four year term.

Elected Cherokee Community Representatives

Although a Tribal Council does not exist per se, it has always been W. W. Keeler's position to try to set up an elected body through which the tribal members could express their opinions. It was mainly through his efforts that the election bill was passed through Congress, an effort which

was begun after his reappointment as Principal Chief in 1954. Up until the middle of 1972 the Principal Chief was advised by an Executive Committee made up of the natural leaders of the Cherokee Communities. On June 3, 1972 the Elected Cherokee Community Representatives Organization was chartered and adopted to accomplish these very ideals. The Elected Cherokee Community Representatives Organization is currently comprised of eighty-five (85) representatives and assistant representatives coming from over forty-three (43) Cherokee communities. Others can be added simply by applying. It is a voluntary organization and its decisions are not legally binding on anyone or any organization except those of its own. The qualifications are loosely set to allow membership to all those who are interested. The representatives must represent a community of at least twenty-five (25) persons who are members of the Cherokee Nation of Oklahoma. This community must be reasonably geographically central. Even though the Elected Cherokee Community Representatives have no legal authority, it must be noted that their opinions are highly regarded - so much so that they are, in effect, always followed. This practice of allowing members of a volunteer organization to make costly decisions is, in my opinion, somewhat questionable. It will be conceded, however, that there is a definite need for some body or group of elected capacity to make these decisions. This is clearly not the format. I must add also in all fairness that some of the work by the representatives is exceptional.

The Elected Cherokee Community Representatives have seven standing committees which work on various activities. They are: Employment Screening Committee, By-Law Revision Committee, Credentials Committee, Roads Committee, Finance Committee, Industrial Committee, Education Committee. There are usually five or six members to each committee. Other committees can be and are set up from time to time to handle special projects. The power of these committees should not be understated; even though a majority vote by all the members can overrule, they seldom do. An example of the tremendous power exercised by this group is evidenced by the finance committee presently working on how a 3.5 million dollar judgement award will be used.

Constitution

A final draft of the proposed constitution was completed on March 27, 1973 and submitted to the Department of Interior for approval. The constitution in many ways is an excellent document and a giant step in the right

direction. Above all that I observed this summer was the continual plea to know how the whole system fits together. No one seemed to know - and a constitution is the first step to a well organized government. Several areas are worth examining, however, to examine if this is the correct way to achieve uniformity.

The legislative branch as set forth in the constitution is marvelous in concept but too big a project for the tribe to take on at this time. It is understood, although not unanimously, that this department would replace the Elected Cherokee Community Representatives. It would be divided between the Senate, which would have two members from each of the following counties: Adair, Cherokee, Deleware, Sequoya, Mayes, Ottawa, Craig, Muskogee, Wagoner, Rogers, Nowata, Washington, Tulsa and McIntosh, or a total of twenty-eight (28), and the Council, which would have three members from each county or a total of forty-two (42). They would meet thirty days a year for pay purposes. There are three main objections to such a legislative body. It will be pointed out that this in no way tries to suggest that there should be no body at all. There is an urgent need for some type of elected body to set policy for the tribe.

The three main objections I have are as follows:

I. The cost of such an organization would be prohibitive to the point of no return.

II. A smaller, more functional group could probably serve the needs of the people better by being able to meet more often but for shorter periods of time.

III. The legislative apportionment obviously violates the one man-one vote rule and therefore would have to fail constitutionally.

B. Commentary

The reader will note that despite obvious variances from tribe to tribe certain common themes emerge from those excerpted portions of the student reports included above, among which are the following:

(1) Participating tribal leaders shared a concern that the tribal constitution was outdated and no longer adequate to suit changing needs of the tribal government.

(2) All researchers agreed that the administrative branch of the tribe considered as a separate entity from the legislative branch of the tribal government or tribal council needed development and support.

This observation is directly in line with number (1) above, tribal needs for constitutional revision. The reasons given for revision of tribal constitutions are generally that the constitution does not provide for or spell out how the tribe is to organize an entity to execute and administer tribal programs. Of course, this shortcoming in the tribal constitutions drafted in the 1930's following enactment of the IRA is understandable since those government lawyers who drafted these constitutions had a relatively narrow view of the purpose for a tribal constitution. That is, they viewed it simply as an instructional device which would set Indian tribes on the road toward self-government along the patterns discussed in the legislative history of the IRA. Such a view may have been adequate for the times, given the generally weakened condition of many tribes, but certainly that is no longer true today. As we noted in the introductory section to this report, tribal leaders today are very conscious of the need for fully developed and functioning tribal government institutions.

(3) It is apparent that the differences from tribe to tribe in terms of governmental structures, customs, resources, population, available personnel, and so on, all dictate the conclusion that no one constitutional document nor one administrative reorganization plan would even suit the needs of all the tribes. However, it would be a valuable effort to develop model structures which each tribe could adapt and modify to meet their own needs.

B. Tribal Court Structures

The next issue or area of tribal government which we asked the students to focus their research efforts on is that of the tribal court structure. We felt that the tribal court system or the judicial branch of the tribal government was undeniably an essential branch of the tribal government without which there would be no enforcement or interpretation of tribal law. The following excerpt from our memorandum to the students will illustrate the approach we wished them to take in evaluating the tribal court systems on their reservations.

TO: Student Researchers - Tribal Government Reports

FROM: Alan Parker

RE: Tribal Court Structure

From a theoretical point of view, for those tribes operating on the basis of a constitutional form of government, the tribal court represents the judicial branch of government, essential and co-equal to the legislative and executive branches. In reality, my own experience has been that the court is a neglected institution which receives little attention by the tribal council and thus only rarely fulfills its potential. That is, if we assume that the goal for tribal governments is to achieve the full exercise of self-governing powers, the fullest exercise of tribal judicial powers is essential to reaching that goal.

I recommend that you keep these theoretical considerations in mind as you begin your analysis of the tribal court system on your respective reservations. From a practical point of view, however, I am asking that you take much the same perspective described in the memo on tribal governing structures. That is, describe the existing structure, i.e., number of judges, code utilized, types of cases handled, etc. Then compare this with the court structure defined in the tribal constitution and relevant ordinances. Remember that from a practical point of view we are asking you to evaluate: (1) whether the court as it presently exists meets the needs of the tribe in the context of specific issues, i.e., not just in general; (2) if not, why? - because the constitutional provision or ordinance is inadequate, or, simply because the judge lacks training or doesn't receive the necessary support; (3) what direction do tribal leaders wish to take in response; what would your recommendations be?

I would strongly caution you not to get side-tracked onto a detailed evaluation of tribal law and order codes which in my experience is the traditional response of tribal council members as they consider the needs in the tribal court area. That is, I found that many felt that if they only had a more up-to-date and comprehensive law and order code which would spell out in detail exactly what the tribal court should be doing and how the tribal judge should do it, this would resolve the problems. Undeniably it is true that better codes and detailed descriptions of what the ideal court structure should be and what procedures a tribal judge should follow would be a great help in most instances. This is especially so when the law and order committee and the tribal judge do not themselves possess any legal training to speak of and do not feel confident about the direction they ought to be taking. However, it is my personal feeling tnat such a solution does not begin to address itself to questions such as what ought to be the role of the court as the tribe begins to assert full sovereign powers nor does the manufacturing of such a code and court procedures help the committee and judge actually begin to be confident that they have a real understanding about the role and function of tribal judicial powers. In addition, the underlying assumption behind such proposals (in my experience again) is that the goal is to have the tribal court approximate as closely as possible non-Indian court systems rather than to fashion an institution which is tailored to the needs of that specific tribal community. That is, a truly Indian court.

As soon as it is available, hopefully before you leave for the summer, you will be receiving the Model Code drafted by

the Interior Department's Indian Civil Rights Task Force. I anticipate that this document along with supporting backup memoranda may be very helpful on the question of Indian Civil Rights Act requirements for tribal judicial systems in the criminal procedures area. However, the document does not address itself to other than criminal procedures questions and these "other" areas are often the most troublesome, e.g., membership disputes, elections, land rights, and judicial review of tribal council action. As you have seen from reading the survey of cases under the Indian Civil Rights Act, the big questions of due process and equal protection raise problems which go to the heart of the exercise of power by the tribal government. For our present purposes and as you begin analysis of the court system it should be useful to keep in mind the following consideration; namely, that the Indian Civil Rights Act does not by its own terms nor should it be construed to require that federal case law constitutes binding precedent for tribal courts. That is, the requirements in Title II of the Act, the so-called "Indian Bill of Rights", are definitely not the U. S. Bill of Rights and should not be interpreted to mean the same. In effect this means that tribal court judges do not have to follow the same procedural rules that federal courts do. Many tribal judges are of the opinion that federal case law is somehow binding such that they must be informed of recent decisions in the area. This attitude has primarily been fostered by a document published by the Tribal Judges Association and distributed to nearly every tribal judge. This "Manual for Indian Court Judges" along with its backup reserach document, initially published in 1971 I believe, adopted the position that the whole range of federal case law was brought in to tribal courts by the Act and is consequently binding. This is clearly error. Essentially this means that the tribal judge, in lieu of something like the Model Code to be published by the Interior Department, which would purport to offer an administrative interpretation of Title II requirements, must simply arrive at his own interpretation of the Act and what it means in any given fact situation. The tribal judge ought to be safe from federal court review for violating the Act as long as he determines that his decision does not seem to be contrary to a layman's understanding of the Act. If such is his conclusion, he then ought to make a written record of his findings and attach such to the case file or log book.

Finally, I would advise each of you to consult the "Outline of Discussion..." handed out during the week of orientation as pages six and seven discuss tribal courts and list some

of the more relevant issues. We realize that tribal court systems will vary greatly from reservation to reservation but despite these variations the overriding question we are asking you to address in your reports is "does the existing system meet the needs of the community, from both a practical and theoretical point of view?"

1. Student Reports: Tribal Court Structure

a. Confederated Salish and Kootenai of the Flathead Indian Reservation:- Montana

Prepared by: Urban Bear Don't Walk

Introduction

The court system of the Confederated Salish and Kootenai of the Flathead Indian Reservation, Montana, is unique. This tribal jurisprudence is a blend of Salish, Kootenai, and white laws. While there are those who think that the Indian was lawless, in truth Indian respect for law is not something imposed upon him by the white man, something brought to him by white trained Indian lawyers. This report will provide a glimpse of the court system as of the summer of 1974, and discussion will center around the following areas:

I. The nature and sources of the tribal court's authority.

II. The division of jurisdiction between the Confederated Salish and Kootenai Tribes (hereinafter CS&K Tribes) and the State of Montana.

III. The body of law available to the tribal court.

IV. The personnel of the tribal court.

V. The facilities of the tribal court.

VI. Other observations regarding the tribal court.

I. The Nature and Sources of the Tribal Court's Authority

There is record of an Indian court, then called an Indian court of offenses, existing on the Flathead Indian Reservation as early as 1886. Earlier history of the CS&K Tribes reveals that in regards to determining guilt or innocence of a tribal member accused of a crime, this

responsibility was placed upon the chief. In difficult cases, the chief often called other headmen to advise him in his decision. The punishment, which writers state was a very effective determent, was a whipping. The Jesuits stopped the CS&K Tribes from this form of punishment.

The CS&K Tribal Council was organized under the Indian Reorganization Act of 1934. The I.R.A. is significant in that it was to provide the vehicle by which Indian tribes were to become self-governing. The CS&K Tribal members adopted a constitution and bylaws, and subsequently were issued a charter by the Secretary of Interior. The CS&K Tribal Constitution contained those powers that the general membership wanted to delegate to the Tribal Council, and the power providing that the Tribal Council could create a court is contained in para. (1), Sec. 1, Article VI, Constitution and Bylaws of the CS&K Tribes of the Flathead Indian Reservation. The pertinent part provides:

> 'SECTION 1. The Tribal Council shall have the power, subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and attached Bylaws:
>
> (1) To promulgate and enforce ordinances which shall be subject to review by the Secretary of the Interior, governing the conduct of members of the Confederated Tribes, and providing for the maintenance of law and order and the administration of justice by the establishment of an Indian Court, and defining its powers and duties.'

Pursuant to this power vested in the Tribal Council, a Tribal Court was created and began functioning in 1937.

The framers of the CS&K Tribal Constitution evidently did not feel compelled to make the Tribal Court a separate and distinct arm of tribal government but made it an adjunct of the Tribal Council. The words in the Constitution that 'The Tribal Council shall have the power to ... establish an Indian Court, and define its powers and duties' renders the Tribal Court directly answerable to the Tribal Council. Although I heard from a number of tribal members that the Tribal Council has too much say over the Tribal Court, I was not personally aware of any wrongful interference by the Tribal Council during my work for the CS&K

Tribes. In fact, there were cases that were first taken to the Tribal Council but were referred by the Council to the Court.

It would seem that the Council would be very hesitant to overrule the Court. Repeatedly overruling or intereference by the Council with the Court would indicate to the general membership and anyone else who may be a party before the Court that the Court really has no power, and it would lose what respect it does have. The power of the Council to define the powers and duties of the Court is apparent, but this does not say that the Council may tell the Court how it should actually decide a case.

The CS&K Tribes are presently in the process of amending their Constitution. The proposed constitution in para. (1), Sec. 1, Article VI, takes jurisdiction over all persons. The proposed constitution does not make the Tribal Court a separate arm of tribal government. It does, however, attempt to not have the judges subject to being hired and fired by the Tribal Council.

II. The Division of Jurisdiction Between The Confederated Salish and Kootenai Tribes and the State of Montana

The CS&K Tribes, like other Indian tribes, were indigenous to the territory which eventually became Montana. In the 1950's, a time which Indians recognize as the termination period, Congress passed P. L. 280. Public Law 280 gave Montana, along with other states having within their boundaries Indian reservations, the authority to acquire jurisdiction over those reservations. As to what occurred between the CS&K Tribes and the State of Montana see the letter written by Richard A. Baenen, of Wilkinson, Cragun & Barker, CS&K Tribal attorneys, to Louis R. Bruce, Commissioner of Indian Affairs, dated 9/16/71.

The State of Montana, therefore, has jurisdiction over members of the CS&K Tribes for major crimes committed on the Flathead Indian Reservation. In regards to misdemeanors, the local governmental units such as the counties and towns have jurisdiction over members of the CS&K Tribes for crimes of this nature committed on the Flathead Indian Reservation. The CS&K Tribes have a code of Indian offenses, which are basically misdemeanors, but this law only applies to members of the CS&K Tribes and Indians of other recognized tribes. By recognized tribes it is meant those Indian tribes

recognized by the United States Government. The CS&K Tribes do not have jurisdiction over non-Indians.

When the CS&K Tribal Council permitted the State of Montana to acquire criminal jurisdiction over its tribal members on the Flathead Indian Reservation, it also turned over a limited amount of civil jurisdiction. The CS&K Tribal Council enacted Ordinance No. 40-A on May 15, 1964, which permitted the State of Montana to take civil jurisdiction concurrently with the CS&K Tribes in the areas following:

(a) Compulsory School Attendance
(b) Public Welfare
(c) Domestic Relations (except adoptions)
(d) Mental Health, Insanity, Care of the Infirm, Aged and Afflicted
(e) Juvenile Delinquency and Youth Rehabilitation
(f) Adoption Proceedings (with consent of the Tribal Court)
(g) Abandoned, Dependent, Neglected, Orphaned or Abused Children
(h) Operation of Motor Vehicles Upon the Public Streets, Alleys, Roads and Highways
(i) Laws of the State of Montana, and Ordinances and Regulations of a Criminal Nature Applicable within Incorporated Cities and Towns.

On May 5, 1965, approximately one year later, the CS&K Tribal Council amended 40-A part (i) as follows:

(i) All criminal laws of the State of Montana and all criminal ordinances of Cities and Towns within the Flathead Indian Reservation.

Ordinance 40-A, as originally enacted, was somewhat ambiguous because (i) if read literally appears to turn over all criminal and civil jurisdiction to the State of Montana. The revised 40-A clarified that the CS&K Tribal Council was turning over to the State only a limited amount of civil jurisdiction. The case, Security State Bank v. Pierre, 511 P.2d 325 (1973) made this clear. A member of the CS&K Tribes borrowed money from a bank located on the Flathead Indian Reservation, and signed a promissory note. He then defaulted on his payments, and the bank brought an action against him in state court. The Montana Supreme Court overruled the district court which had allowed this action to be brought and held:

> 'That Montana courts were without jurisdiction over civil dispute involving commercial transaction entered into on Flathead Reservation between enrolled member of CS&K Tribes residing on reservation and non-member.'

This civil matter did not fall within those areas turned over to the State by the CS&K Tribal Council by Ordinance 40-A. In a very recent case involving a member of the CS&K Tribes who brought a suit in a wrongful death action, the district court held that the CS&K Tribal member could not bring suit against a non-member in district court. The Montana Supreme Court reversed and remanded the case following the principle that Montana courts must and traditionally have given free access to its courts and equal protection of its laws to all persons. McCrea v. Busch, Vol. 31, State Reporter (1974).

After the Pierre case, Indians who were excellent credit risks had their credit dry up. The creditors had added the criterion of "color" to the other credit criteria of "character", "collateral", and "capacity". The CS&K Tribal Council on March 30, 1973, enacted the following:

> 'The Tribal Court of the Flathead Reservation shall have jurisdiction of suits brought by parties who are not members of the CS&K Tribes of the Flathead Reservation Montana...The court shall have no jurisdiction for purposes of this paragraph over any suit involving a debt that became due and owing or a claim that accrued prior to the date of enactment of this ordinance.'

This Ordinance, of course, changed the old law which required that a CS&K Tribal member first stipulate to go into Court as a defendant in a civil action where the plaintiff was a non-member. In a limited amount of civil matters, the State and the CS&K Tribes have concurrent jurisdiction. It should be noted that in adoptions, the tribal court must first consent. In those matters falling without that limited area listed in 40-A, a non-member cannot take a CS&K Tribal member into state court, but the non-member can bring suit in tribal court. A CS&K Tribal member cannot take a non-member, excluding Indians of a recognized tribe, into tribal court, but the CS&K Tribal member can sue in state court.

III. The Body of Law Available to the CS&K Tribal Court

Ordinance 36-A (Revised) is the basic CS&K Tribal Law and Order Code, and is divided into Chapter 1, Reservation Court; 2, Civil Actions; 3, Domestic Relations; 4, Sentences; and 5, Code of Indian Tribal Offenses. The bulk of the cases actually handled by the CS&K Tribal Court, say 90 to 95 percent, are criminal cases. As indicated earlier, those acts defined as criminal are primarily considered misdemeanors. Article VI, Sec. 1, para. (1) that paragraph empowering the Tribal Council to establish a court, also gives the Tribal Council the power to promulgate and enforce ordinances which shall be subject to the review by the Secretary of the Interior, governing the conduct of members of the Confederated Tribes.... Also, as earlier indicated, the CS&K Tribal Court takes jurisdiction of other Indians who are members of recognized Indian tribes; and herein it is believed that there is a problem. I don't dispute that the CS&K Tribes should have jurisdiction over all persons who come within their reservation boundaries, but I believe that 36-A which purports to take jurisdiction over Indians of other recognized tribes is unconstitutional because it conflicts with Article VI, Sec. 1, para. (1) which as the underlined portion immediately above indicates that the Tribal Council only has the power to enact laws governing the conduct of members of the Confederated Tribes. Confederated Tribes would, of course, refer to only the Salish and Kootenai tribal members living on the Flathead Indian Reservation....

Another problem area is that dealing with traffic violations. The CS&K Tribal Code evidently adopted wholesale the Montana Vehicle Code as of 1959. Since that time, the Montana Vehicle Code has been amended, yet the SC&K Tribal Code has not officially adopted these amendments. As a practical matter, those who are responsible for enforcing the traffic laws will write in, unofficially, those Montana amendments. For example, the Montana Vehicle Code has changed the percent of alcohol in the blood in determining when a person is considered intoxicated, and the CS&K Tribal Council has not adopted this new percentage. The police department, however, follows the new percentage.

A law that is vague is considered unconstitutional, and a person of common understanding must be able to understand the law. Persons brought before the Tribal Court do not understand the law in many cases, particularly when it is changed without official action.

Although I was unable to obtain a copy of the proposed law and order code, it is my understanding that the major change was that of changing the jurisdiction from "all Indians" to "all persons." This is a step in the right direction, but unless other changes are made in the code, the problems will just be compounded. White people, unlike the majority of Indians, can usually afford legal counsel and they have a firm belief in the adversarial system. They may be guilty as sin, but until it is proven they consider themselves presumed innocent.

In civil actions, the body of law that is to be applied is in this order: (1) Laws of the United States that may be applicable; (2) Regulations of the Interior Department; (3) Ordinances or customs of the Flathead Tribe; and (4) Laws of the State of Montana. One might say that the CS&K Tribal Court has more applicable law in civil actions than the State of Montana. When non-members come into the Tribal Court in civil actions and there is no other controlling law except that of Montana they are going to insist that it be followed. This will require a considerable amount of research; and if the Court Judge is unable to do his research, then someone should be provided to assist the Judge. A written opinion will also be required. An example of a rather complex civil action brought to the Tribal Court was that involving a dispute over the location of a right of way across trust property. The first question that had to be answered was whether or not the Tribal Court had jurisdiction since the land was held in trust. The next question was whether or not there was an agreement in law or fact. All the applicable areas of law had to be researched, which included federal law and Montana State law. Civil actions will no doubt present a challenge to the court, but they can be adequately handled.

The area of domestic relations presents difficult issues to any court. The CS&K Tribal Council has been delegated the power to handle domestic relations. Article VI, Sec. 1, para. (q) provides: 'To regulate the domestic relations of members of the Confederated Tribes.' Pursuant to this power vested in the Tribal Council, Chapter 3 of 36-A (Revised) was enacted. In regards to Indian marriages the law states:

> 'Indian custom marriages and Indian custom divorces are from this time on illegal and will not be recognized as lawful marriages or divorces among the Confederated Salish and Kootenai Tribes of the Flathead Reservation.'

(and)

> 'All Indian marriages and divorces must be consummated in accordance with the State law of Montana except that no common-law marriages shall be recognized within the original bounds of the Flathead Reservation.'

Enacting such a law creates an anomolous situation in regards to marriages on the Flathead Reservation. State law recognizes common law marriages, but the CS&K Tribes do not. Of course, the recognition of common-law marriages would have been a recognition of Indian custom marriages. Why most Indian tribes let the white man tell them that the only way to get married was white man style is hard to determine.

As to whether or not the CS&K Tribal Court should handle domestic relation matters presents a policy consideration. The CS&K Tribal law provides for concurrent jurisdiction with the State, but divorces are not handled as a practical matter. The Montana State Supreme Court in the case of Bad Horse v. Bad Horse, Vol. 31, State Reporter (1974) stated:

> 'Domestic relations may well be one of those concerns that are peculiar to Indian culture and tradition and best administered by tribal officials who understand Indian marriage and divorce customs although our holding is not predicated thereon...'

The State court is recognizing the special expertise that exists with Indian tribal judges in these matters, and I believe that it is correct. It would take a newcomer to a reservation almost a lifetime to know the people as intimately as some of the tribal judges know the people. These people can attempt to fool the newcomer, but not the judge.

Members of the CS&K Tribes will often obtain their divorces in state court. The court in rendering its decree may provide for alimony or child support payments. If, for example, the husband is a member of the tribe and has certain income coming from his trust property or from dividends derived from tribal resources, the wife will attempt to execute through tribal court on this income. The Tribal Court may levy on this income, but this is done merely out of comity for the state court. There is no faith and credit clause existing between the CS&K Tribes and the

States. States will recognize each other's judgments, but one wonders whether the State of Montana would recognize a CS&K Tribal judgment, particularly when the State has indicated that they don't even want these people who are Montana citizens in state courts. It seems a shame that Indians in order to get into district court must first have the Montana State Supreme Court command the lower court to allow them in.

VI. Other Observations Regarding the CS&K Tribal Court

The Tribal Court has been severely neglected. Why this is so is better known by those who are familiar with the development on the Flathead Reservation. Maybe it was felt that in the long run the tribal court would be phased out. This has not happened, and, in fact, the tribal court is being asked to shoulder more responsibility. There shall always be a need for a tribal court as long as there are CS&K tribal members. There are Indian people who respect and obey this court and it can serve as the force that binds people together. Disputes must be settled regardless of how petty they may seem to others.

b. Chippewa- Cree, Rocky Boy Reservation: Montana

Prepared by: Robert E. La Fountain

How Court System Is Set Up

Rocky Boy Reservation presently has two tribal judges, a Chief Judge and an Associate Judge. Both are elected to four-year terms. The Chief Judge holds court on Mondays and Fridays of each week between the hours of ten A.M. and four P.M. The Associate Judge holds court as he is needed during the remaining days of the week. Both judges sit together on appeals although very few appeals ever occur.

These judges apply the tribal law and order codes which are outmoded and incomplete and they also apply state laws when the tribal law and order codes don't specify the offense. The judges apply whichever of these laws seems appropriate. The judges handle juvenile, misdemeanor cases, petitions for review of election board decisions, and punish for violations of the law and order ordinances. . .

Under tribal-BIA contract the Chief Judge is required to hold ten A.M. to 4 P.M. court hours. He must be enrolled on the reservation; be of high moral character; must have the respect of the tribe; must be honest and trustworthy and be of integrity, sound judgment and temperate habits; minimum of twenty-five years of age; be physically able to perform duties of the position; possess emotional and mental stability; must not have been convicted of a felony or of a misdemeanor within the past year. These contract qualifications apply to the Chief Judge only because he is the only judge receiving his salary from the BIA funds rather than from tribal funds.

Neither the Tribal qualification list nor the Tribal-BIA contract qualification lists has anything in it about legal qualifications. There is nothing about training sessions for the judges and there is no provision for consultation for court procedure with an attorney or other consultant on such matters. . .

Tribal court has jurisdiction over civil suits which are brought when the defendant is a member of the Tribe and over suits between members and non-members when brought there by stipulation of both parties. The Court applies Tribal law if it exists on the subject matter. Otherwise the Court applies appropriate State or Federal laws. . .

The practice of the Tribal court as to non-Indians committing misdemeanors on the reservation is to turn those offenders over to Hill County authorities. The Tribal Court does, however, exercise jurisdiction over non-member Indians who commit offenses on the reservation. . .

Adequacy and Inadequacy of Staff and Courts

Because there's no full time tribal attorney and because there's no other legal counsel readily

available to tribal members the court system is probably not as loaded with civil rights cases as it could be. Conversely, the court system is quite busy in erratic intervals (after ceremonials, etc.) with criminal misdemeanor cases. Legal representation on-reservation is almost non-existent. The general practice is to allow each defendant to represent himself. Most of these defendants don't appear knowledgeable of the fact that they can get anyone they want to represent them.

The courtroom these defendants must go to for their hearings is a very small, meagerly furnished, non-air conditioned room. The judges consistently complain about the inadequacies of this courtroom situation, but little gets done to change the situation.

Generally the judge and the defendant are in the courtroom alone during the hearings. There is seldom a policeman present to maintain order and a court clerk is not always present for recording the proceedings. . .

Relationship Between the Court Structure and the Governing Structure

The governing structure depends on the court structure to hold hearings, trials, and for enforcing the tribal codes and regulations. The governing structure doesn't appear to have any great fears of the court structure's overstepping its authority. The court structure appears to be in no position at present to threaten legislative and executive powers of the Business Committee. The court structure asserts very little power other than routine handling of misdemeanor cases. This probably occurs because of the lack of expertise within the court system.

There is an apparent lack of communication by which the governing structure could guide the court structure as to desireable or recommended actions as to court administration and procedure. There is a general failure of the governing structure to notify by resolution or otherwise the court system of the governing structure's desires as to law and order. And the Business Committee and its law and order subcommittee continually procrastinate revision action of the law and order codes so the court is forced to apply the outdated codes and/or to apply accessible and appropriate state and federal laws to tribal situations.

Summary

In general the court system probably meets the minimal court related needs of the Tribe at most. Under the present court structure of inadequate and non-trained court personnel and with the present inadequate court facilities the court system is not capable of meeting all ranges of tribal legal needs. The lack of expertise limits the extent of the Court's ability. The Constitutional provision for the court system is too broad. It sets up a court system but gives no guidelines to the court system personnel. The law and order ordinances are generally outdated and insufficient to serve as effective guides to law enforcement. The judges lack legal and judicial training and don't receive necessary support from the tribe to make the court system as effective as it could be. The court is expected to rely on the funds it can generate through fines for making any court improvements.

Since the duties, powers, and procedures of the courts are not comprehensively defined for use as guidelines and since the law and order codes available to the court are outdated, the inexperienced, untrained judicial employees cannot really be expected to be very effective.

Until recently the tribal leaders have taken very little action to improve the court structure. Perhaps this is because court system personnel have done little themselves to push for court improvement. Perhaps it is because some tribal leaders feel the court system is effective and that it doesn't warrant budgeting of tribal funds for that purpose. Perhaps it is because tribal leaders have felt there has been very little technical assistance available to recommend the means by which the court system can be improved. Or perhaps it is because there is a general lack of concern for tribal affairs by many tribal leaders as well as by individual members. (There has recently, however, been a Business Committee request for Law Enforcement Assistance Administration funding for a police expansion program and a court improvement program. The police force will undoubtedly be expanded and the court improvement proposal has only recently been submitted.)

Recommendations

I would recommend: That the tribe organize training sessions for court personnel - these sessions would indoctrinate the court personnel on court administration, legal procedure, and the Indian Bill of Rights as compared to the U. S. Bill of Rights; that moot court sessions be held to demonstrate legal and judicial procedure (under consultation of an attorney); that the Tribe purchase simple, non-technical procedure books to guide the judges; that the court clerk be present at all hearings and trials; that a police officer be appointed to be present during all hearings and trials; that records and registers be kept of all court hearings and trials; that the tribal law and order books be updated and revised; that ordinances be enacted which will be helpful in guiding the judges and that powers and duties be more specifically spelled out; and that the tribe maintain a policy of separation of powers between the judicial and executive-legislative branches so that the judges can attain a feeling of independence in their judicial roles.

I would also recommend that the tribe follow up on the LEAA proposal for court improvement. Even if the grant request is rejected the tribe should make every effort to create the positions pointed out as necessary in that request (full-time tribal attorney, Tribal Prosecutor and Tribal Defender, and a tribal legal secretary together with the legal books necessary to these positions). It is important that any improved court system at Rocky Boy be structured to fit the needs of the tribe and not be structured after existing state or federal systems merely because they appear effective.

I would also recommend stricter qualifications for associate judges - perhaps qualifications comparable to those of the Chief Judge, who is under Tribal-BIA contract. I would recommend that prospective judges be required to attend specified training sessions on procedure, etc., prior to assuming the position as tribal judge.

c. Oneida: Wisconsin

Prepared by: Gerald Hill

Introduction

There is currently no existing tribal court structure. It doesn't appear that such a court structure was envisioned by the framers of the present constitution with the possible exception of Article IV, Sec. 1(f).

Historically there was a tribal court which had quite extensive powers. These were determined and set forth in the constitution of 1866. It isn't clear when this was discontinued but at least by the time of the Indian Reorganization Act in 1934.

Tribal officials have differing opinions of the usefulness of an Oneida Tribal Court system. The opinions range from a feeling that such a system would be impractical because Oneida is not geographically contiguous to the idea that the possibility ought to be studied and prepared for to the prevailing opinion that other tribal governmental responsibilities are more important at this time.

In my opinion, since there hasn't been any type of functioning tribal court system within the memory of the people I've spoken with, such a system would be, for all practical purposes, an innovation. As a new tribal attribute it would present quite a problem in education.

As with other problems, i.e., personality differences, politics, etc., there doesn't appear to be any short solution.

In conversing informally with various tribal members and officials, I think that when there has been a persuasive presentation of the purpose and need for such a tribal court system as a significant attribute of tribal sovereignty that there would be more of a movement for the implementation of such system. Whether or not such persuasion is available now I am unable to determine. However, given the genuine concern for improvement of tribal government by both officials and members it appears that the tribe is working to consolidate its effectiveness, and whether a tribal court system in Oneida is more than a potentiality only time can tell.

The Oneida tribe has established its priorities and a tribal court system seems justifiably to be given less consideration than some of the other attributes or needs, e.g., improvement of management and administrative procedures.

Discussion

There are many problems facing the implementation of a tribal court system in Oneida. One of these has to do with the geographical location of the tribal population.

There are currently enrolled over 7,000 tribal members. Of these, 2,500 live in the immediate community of the reservation. About 1,500 are residents on the reservation. Although only those who reside in the counties in which the reservation is situated may vote in elections, the enforcement of a court order against those not immediately on tribal land would be difficult if not impossible. Also, any tribal decision involving disbursement of money, e.g., claims judgments, is very susceptible to challenge from any of the enrolled members, again raising questions of jurisdiction and enforcement in what would appear internal tribal matters.

The more obvious problems are education of the tribe as to the function and purpose of a tribal court, training of personnel to staff such a system, the implementation of a judicial code, the physical facilities, and the securing of the necessary funds to operate the court system.

Since the constitution is in need of revision, it would seem that the power to create a court system could be included in a new or updated constitution.

The general attitude toward this particular function is illuminated by the fact that a resolution, dated Feb. 4, 1974, was passed asking repeal of P.L. 280 with copies to both state Senators, the House Representative, Governor and assorted other officials. The next step would be for the tribe to study the feasibility and functions of such a system.

Without knowing for sure, it seems that help could be had in solving some of these problems presented above from among the various Indian Law programs and organizations.

In the past year, a suit was brought by the tribe in a county court to enforce a provision in the land use ordinance which involved the sub-leasing of tribal land by the member lessee to a non-member. This case was lost and, to me, puts in question the effectiveness of the entire ordinance. Although I haven't received the pleadings, it would appear that it was a tactical error for the tribe to bring suit in a local court since this was an internal tribal matter. In any case, this case points out the problems inherent in the enforcement of tribal ordinances. It would appear that the tribe undermined itself in this instance.

In fairness to the tribe, they had sought opinions from the secretary and Bureau for nearly a year without success and therefore without support they were practically forced to proceed in the way they did. This type of relationship with the Bureau is patently inexcusable and gives lie to any claim the federal government makes regarding aid to the tribes in seeking self-determination.

Another problem expressed by tribal officials is that the Oneida tribe is geographically, governmentally, economically, and culturally so intertwined with local governments that any present talk of a tribal court system is purely academic now. I tend to agree with this evaluation.

Presently, I feel that this is an area in which the Indian law students could be an extreme asset to the tribe. When I leave I hope to continue studying a tribal court system and present the results of such study to the tribe for their information and whatever help it might be. . .

d. Pueblo of Laguna: New Mexico

Prepared by: Ron Solimon

Existing Tribal Court Structure

The Tribal Court was established pursuant to Article Five, Section One of the Constitution and By-Laws of the Pueblo of Laguna. There are presently two judges working for the court system. The chief judge is a non-Indian attorney, and the associate judge is a Pueblo of Laguna member. The cases involving more complex facts and legal issues are handled by the chief judge, whereas the Laguna judge handles the less serious cases. On certain occasions the associate judge sits in on cases that the chief judge is handling so as to learn legal techniques and methods of handling the more complex cases. Through the chief judge's association with the Pueblo of Laguna Court he has recognized and learned many of the customs and traditions of the Laguna people. The knowledge and awareness that he has of these customs and traditions is evident in his decisions.

Laguna has adopted a Law and Order Code giving the Pueblo Court civil and criminal jurisdiction. The Pueblo has recently voted to adopt an Implied Consent Ordinance so as to maintain jurisdiction over non-Indians entering the reservation. This is perhaps demonstrative of the confidence that the Council has in its existing tribal court structure.

In the disposition of Civil and Criminal cases the court is bound to make its determination by relying on the applicable law in the following order of precedence: (1) Tribal Law and Order Code, (2) Pueblo of Laguna customs and ordinances, (3) federal laws or the laws of New Mexico where not in conflict with Pueblo Ordinances and customs. The Council retains the authority to enact ordinances to establish, govern and regulate the procedures of the court and of the Court of Appeals. The judges of the court also have the authority to make recommendations to the Tribal Council for the enactment of ordinances or the amendment of the Tribal Law and Order Code.

If a party is not satisfied with the disposition of a case by the court, then he may make an appeal to the Court of Appeals. The Court of Appeals consists of the Staff Officers of the Tribal Council. In all cases, the disposition of the Court of Appeals is final.

The majority of the cases handled by the court pertain to domestic relations. In this instance, the judge takes on the role of a family counselor wherein he offers several remedies to the particular situation. When the matter cannot be remedied by just one counseling session, the judge directs the parties to the family counseling center, or probation officer here at the Pueblo, where professional and paraprofessional counseling are available.

Pursuant to the 1968 Indian Civil Rights Act, the Tribal Council adopted an ordinance to govern the admission, practice and discipline of attorneys appearing before the Pueblo of Laguna Courts. Prior to the passage of this ordinance, parties brought before the court were not allowed to be represented by an attorney at law. Under the provisions of this ordinance the attorney must abide by the rules of procedures of the Pueblo Court which require more sincerity than formality. The attorney must also agree to support the customs and traditions of the Pueblo of Laguna along with the Constitution of the United States and laws of the State of New Mexico. (1) There is a provision for a next friend to speak for parties to an action. (2) This provision complies with tribal customs and traditions and promotes a problem-solving forum rather than a Court of Motion.

Actual v. Documented Tribal Court Structure

The court system as it exists today operates in almost complete congruence with its documented authority. The court could play a larger role in the settling of membership disputes, but the recognition of Laguna members has long been a duty of the Tribal Council. The court plays a large role in family counseling, as I previously pointed out. This role was primarily handled by the various head officers in each village of the Pueblo, but the growing magnitude and complexities of domestic problems overshadow the traditional methods in some instances and this is where the court and its resources are asked to intervene.

Direction Tribal Leaders Have Taken in Response to Current Needs

The Tribal Council took the initiative of seeking matching funds through LEAA so as to construct a correction and rehabilitation center on the reservation.

The $450,000 complex is now complete and additional funds are being sought to furnish and staff the new facility. The Laguna Planning Commission is responsible for the proposal writing, research, leg-work and negotiations that are essential to this project. This new facility will enhance and centralize the rehabilitative and social welfare efforts of the different programs that the Tribe presently sponsors.

e. Papago Tribe: Arizona

Prepared by: Hilda Manuel

The Papago Tribe organized with constitution and by-laws under the Indian Reorganization Act of 1934 has established a tribal court following the pattern for courts of Indian offenses in the federal code of regulations.

The existing structure of the Papago tribal court is grossly inadequate and crowded. It houses two full-time judges, one part-time associate judge, a prosecutor, a probation officer and two clerks. In addition, the building also houses the prisoners, the police force of about twenty officers plus its staff.

The tribal court is vested with jurisdiction to try all types of cases, thus the court has jurisdiction over property, torts, wills and family-related problems, e.g., divorce, adoption or custody.

The jurisdiction of the tribal court is concurrent with federal and state authorities when such authorities have lawful jurisdiction, e.g., jurisdiction under the Major Crimes Act. Presently, the tribal court gives no faith or credit to outside court judgments. This is premised on the idea that a tribal member should exhaust his tribal remedies before going to an outside court. On the other hand, civil judgments of the tribal court can be recognized and given effect by outside courts.

The tribal court may exercise jurisdiction over non-Indians in civil actions by the stipulation of both parties. It has yet to exercise jurisdiction over criminal matters although the revision of the law and order code will provide for such jurisdiction.

Judgments of the tribal court can usually be appealed within the tribal court system. Section 6 of the law and order code establishes such a right. However, the absence of any review proceeding outside the tribal court leaves the court open to criticism.

The law and order code is modeled after the code of offenses in the federal code of regulations, and thus is labeled a CFR code. When the offenses committed do not fit into any category of the code, the judge will look to applicable state or federal law. The code has never been revised since its adoption. In fact, this summer an attorney has been contracted to rewrite the code tailored to the needs of the Papago people. . .

Courtroom procedures in hearings or trials are somewhat informal, although no disrespect of the court is tolerated. After the court is formally announced, the clerk will read the complaint in Papago or English. The judge will ask the defendant if he understands the charge, and, if not, the judge makes such explanation as may be necessary. Frequently there is talking between the complaining parties as to their dispute. Sometimes even the judge will join in the discussion. In one particular hearing I observed, a child custody hearing, the judge was making comments to the petitioner about what she should do. This was prior to the time for making a ruling. The prosecutor, a non-Indian,found himself at a disadvantage because his client was being persuaded to follow one course of action while he was advocating another. The remedy is, of course, to train an Indian prosecutor or hire an interpreter. The prosecutor is training an Indian to prosecute, and he should be working within the next few weeks. Meanwhile, the prosecutor is in the process of setting up his office. He says it will become an alternative to the existing Papago legal services.

An observation by the prosecutor and myself of the tribal court is that often the tribal judges disregard the evidence. For example, evidence from an illegal search can be admitted in court just as well as evidence from a legal search. In light of this, the prosecutor felt the judges could use more training in matters of evidence.

Overall, the tribal judges are fair and knowledgeable in their roles.

In the past there has been little or no contact between the tribal council and tribal court. The tribal council has never given much credence to the tribal court system. The only contact was with the budget which is reviewed and modified by the tribal council as they deem desirable. An indirect contact is established through the law and order committee. The committee functions as spokesman for the tribal court. One function is to carry before the council resolutions coming from the tribal court, e.g., vehicle control, drug control, etc.

One area where there is major concern involves juvenile delinquency. Since there is no separate facility for juveniles, they are housed along with adult offenders. If the juvenile needs to be jailed for a long period of time, he is sent to one of two rehabilitation centers. One is located on the reservation and the other 60 miles away. The escape rate from the centers is high. As a result, most of the juveniles return before the tribal court, only to get sent back to the center. With Title III monies from the Manpower Act coming in, plans for hiring several juvenile counselors have been finalized. In addition, money from LEAA is forthcoming to build a juvenile detention home near the tribal courthouse.

The tribal court on the whole appears to be serving the needs of the community to the extent possible with its present manpower. By 1976 the Tribe will be administering the law and order program and, hopefully with qualified personnel, the tribal court and law and order department will provide better services, as well as better facilities.

f. Pueblo of Santa Clara: New Mexico

Prepared by: Jody Polwell

The Santa Clara Court was instituted and established in 1964. Under the constitution there are no terms or direct statements as to the establishment of a tribal court system, thus resolutions were passed to establish the tribal court system. The tribal council received an implied authorization to establish a court system under Article IV, Sec. 1, sub-section V, which article granted the tribal council the right to pass ordinances and resolutions. The tribal court is limited in its power to adjudicate cases since the court system is in its early stages of development.

The constitution gives the pueblo council the right to adjudicate all matters coming before it which they have jurisdiction over. The tribal council has tranferred some of their jurisdictional rights to the tribal court as authorized to them under the constitution. The council adjudicates all other cases that the tribal court has not been empowered with. Cases that the tribal court has jurisdiction over are traffic violations on the exterior and interior boundaries of the reservation and misdemeanors, both civil and criminal. The Federal Criminal Code is followed for all criminal cases since there are no written criminal codes. The tribal court with the assistance of state and federal legal agencies are in the process of writing a criminal code.

The tribal court has acquired jurisdiction only over Santa Clara tribal members and non-membered Indians as of this date, all other violations by non-Indians are transferred to the proper court out of the jurisdiction of the Santa Clara tribal court.

The Santa Clara Council has maintained its roots of power in the tribal court system by establishing itself as an appeals court, although the council has given the tribal court a certain amount of independence by not intervening or interfering with the final adjudgement of the defendants. If the defendant is not pleased with the final verdict, he has a member of Santa Clara or a member of another tribe appeal his case before the Santa Clara Council. There is no systematized method of appealing the cases.

The tribal courts are held in the Santa Clara Head-Start Building. The courtroom is very small but serves

its purpose for the present. A rehabilitation center is in the process of being completed on the Santa Clara reservation and upon the completion of the center the tribal court will hold their proceedings in the new center. (The proposal for the completion of the rehabilitation center, which has been approved by LEAA, is attached.) The rehabilitation center will serve 1,200 persons in the Northern Eight Pueblos region.

Santa Clara has one tribal judge on part-time basis with a salary of two hundred and fifty dollars a month, and eight police officers employed on part-time basis at a rate of two dollars an hour. The tribal judge and eight police officers are employed by the tribe and paid out of tribal funds. The annual tribal court budget is three thousand dollars a year, which includes the tribal judge's salary only. The tribal judge adjudicates approximately 250 cases a year.

Santa Clara Pueblo is negotiating with LEAA for funds to expand the tribal court personnel. The court personnel under the contract will consist of: one full-time tribal judge, one chief of police, eight police officers and one court clerk. . . Plans are being formulated within the tribal council to establish a circuit judge, who will travel throughout the northern eight pueblos. The rehabilitation center in Santa Clara will be used as the main center for the circuit judge. The establishment of the circuit court in the tribal court system will be realized within a time period of four months.

Recommendations - Tribal Court System

1. Revision or amendments should be made to the constitution and by-laws.

2. Legal training for tribal court personnel, including the tribally employed officers.

3. Maximum delegation of authority should be established for the tribal judge.

4. The inclusion of an associate judge in the personnel proposal before LEAA.

5. The acquisition of funds for the tribal court from tribal funds, or other sources.

6. The delegation of authority by the tribal council to the tribal judge to make contracts and proposals with different law enforcement agencies.

7. The tribal judge should be informed by the tribal council at all times as to any issues or problems concerning the tribal court system.

8. The tribal court system should be made an independent unit from the tribal council and should be allowed the right of disbursement of funds collected through fines, etc.

. Cherokee: Oklahoma

Prepared by: Robert Lowery

The Act of June 28, 1898, commonly known as the Curtis Act, abolished tribal courts and declared Indian Law unenforceable in federal courts with regard to the Cherokee Nation of Oklahoma. However, the proposed constitution takes on the character of overriding Congress and reestablishing a tribal court. The proposed constitution creates a Judicial Appeal Tribunal composed of three members appointed by the Principal Chief and approved by the Senate.

There is no mention of qualifications or of terms of office and it seems to me that if you try to create an equal part of government to other parts you do not leave so much leeway with the legislature to establish enough to effectively control the court. It is also stated further in the constitution that an employee will have the right to go before this tribunal to be given a hearing upon termination to qualify and show cause. It is good that this has to be done, but it seems more important to me to allow the tribal members the right to bring an employee before the court for not doing his or her job or for doing it incorrectly. A constitution should not take power from the people but give them options on how to exercise their natural right to rule themselves.

h. Rosebud Sioux: South Dakota

Prepared by: Carole Anne Hart

The tribal system, as far as it is attempting to deal with the problem of 'juvenile delinquency' on the reservation, appears to me to be beginning to solve the problem. The involvement of the parents seems to really help in many cases. The judge is usually pretty lenient with the first offender and even the second offender in that he allows them to decide what their 'punishment' should be or at least gives them a choice as to what can and should be done about what they did. Most of the time it is really a shock for them to decide about their own futures since most others times they were just given a sentence (mostly punitive) and made to stay in jail. This way they work out an agreement with the judge, juvenile probabion officer and their parents as to what is best for them. Usually if an offender is working or going to school the judge is somewhat more lenient and he is given the opportunity to participate in his work project or put on probation until such time as he will be returning to school.

The tribe operates an attention center where the tribe is attempting to deal with the problems of juvenile delinquency on the reservation. Juveniles who violate or who commit any serious offenses are sent there for a period of from two weeks to one and a half years. The center has Indian House parents and other counselors who try to work with the individual and try to 'get him or her on the right track.' Many parents complain because they feel that the center should be more punitive and not give the child so many privileges. This is probably due to their being used to the punitive method of dealing with past offenders in the tribal court. But this method is very lenient and allows the juvenile much freedom of choice.

The tribal court is attempting to upgrade the entire court and as a result has branched off into a juvenile court and an altogether different method of dealing with the juveniles so that they aren't lumped in the jail with the adult offenders. Most juveniles are taken to the attention center. One of the biggest gripes of the juveniles is mistreatment by police. Some work is being done in this area to alleviate the problem.

In my opinion, the tribe has done a great service by realizing and seeing the problem and attempting to solve it in what appears to be a pretty solid program. So far,

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they have had much success with juvenile offenders by not having the punitive method of disciplining the Rez kids and allowing them to decide something for themselves regarding their future and giving the parents a hand in disciplining the children - which is a first for a lot of the parents. They have to set the limits and enforce them. The child knows this and therefore abides by the rules for fear of getting the parents in trouble. If any of the rules are broken in the agreement that is signed by the juvenile, then the parent is brought in for contempt of court and has to serve time or whatever. This is a good discipline measure because the kids don't want to feel bad about their mothers or fathers serving time for something they did. The police are usually some help in enforcing this by watching closely those who are on probation or who are on this service agreement.

The reason for my being asked to be the Tribal Defense Attorney was that the Tribal Court is now attempting to upgrade all the offices and conduct court just like the real outside world. The first stab at such a thing was the appointment of Mario Gonzales as the Chief Tribal Judge. He is also a member of the South Dakota Bar. The thinking behind this was that perhaps with his working knowledge of the courts he could upgrade the office and bring some type of order to the Tribal Courts. This goal has been attempted and from what I can observe has brought some semblance of order to the Court in that people now show respect for the judge at all times while in the courtroom.

The Chief Tribal Judge attempts to run the courtroom just as if it were a real courtroom, but not with all of the paraphernalia such as black robes, etc. He is the only one with any working knowledge of procedure.

There are three judges who alternate on different days, and one of the judges is the juvenile judge. There is a plan which the tribe hopes to implement regarding the position of a full-time juvenile judge. Court is held every day with every Wednesday reserved for jury trials. Thursdays are left open for custody hearings and other types of hearings. Every day the 'hardened criminals' who are picked up the night before are arraigned.

In the Tribal Court, besides the three tribal judges there are the prosecutor, defense attorney, clerk of court - who also acts as the bailiff, an assistant clerk of court and three secretaries. No licensed attorneys are allowed to practice in the courtroom at this time,

but there are exceptions depending on the case. Most defense attorneys prior to this time were people who were able to speak up for other people and who could have knowledge of how to conduct themselves in the courtroom and learned the court procedures. As yet, there is no attention paid to rules of evidence or any other kind of trial techniques. But the goal is to some day have attorneys (Indian) who do have a knowledge of these things to practice in Tribal Court and conduct court just like the real 'outside world'.

I have learned more from this one week of practicing 'law' than from any other week. I can observe the workings of the entire court system and know the entire procedure that one must go through when arrested. But again, my goal for the short time I'll be here is to get all the petty familiy arguments out from the court-room and leave time for the important things. So far, we have settled quite a few of these family feuds and arguments out of court. There is much plea-bargaining in order to aid many of the prisoners. This is much more agreeable to them than going through all the the hassle of taking up court time. It is fun and really informative and interesting.

2. Commentary

Just as the other institutions of tribal government, i.e., legislative (councils) and executive (administrative) branches, have experienced growing pains due to increased demands being placed upon them, so we find tribal courts in a very uneven stage of development. As is evident from a study of the student reports, the following areas represent common problems for the tribal court systems:

(1) Lack of adequate legal training for court personnel.

(2) Insufficient resources available to support and develop the court system to a level commensurate with the courts' increased caseload.

(3) Inadequate facilities to operate on a truly effective level.

(4) A significant problem for some of the court systems studied but one which was not shared by all participating tribal systems was that of an out-of-date code of law and other supporting tribal ordinances.

On the question of court personnel it is apparent that there is some pressure on tribal councils to either hire a professional attorney as a judge or to restrict the jurisdiction of the court. Since attorneys who are also Indians are extremely scarce, as a matter of practical necessity this means that the tribes who are considering this alternative are faced with the choice of hiring a non-tribal member, non-Indian as a judge. If one concedes that there is value in having as a judge one who understands the customs and traditions of the tribal community as well as possessing a personal knowledge of the members of the tribe, then certainly options other than hiring a non-member ought to be explored. In addition to providing a training program for tribal judges to acquaint them with the fundamentals of criminal and civil law, one could institute a court advisory system either staffed by or with access to professionally trained attorneys. Some tribes have experimented with this option and one example of a successful effort is the Blackfeet tribe in Browning, Montana. Of course, in addition to training for the tribal judge other members of the court system, such as the court clerk, prosecutor and defender and bailiff or sergeant-at-arms.

The reports reflect not only an increased caseload, but also the expanded jurisdiction of tribal courts over such questions as non-Indians' offenses and related civil matters, etc. It is at this level that the presence or absence of a competent court can become truly critical to the recognition of tribal self-governing powers. If the court is not available to insure a real implementation of tribal authority and law in this area, then assertion of tribal power can become a meaningless exercise. But, as some of the reports indicate, as a whole, tribal council members have not grasped the significance of this fact. What this means is that the strengthening and development of the courts must become a number one priority for tribal leaders. What would follow from such a realization is that the best and most qualified personnel would be attracted to the position and a fair share of tribal resources would be allocated for the court systems. Such problems as have been pointed out cannot be solved overnight but the way has been shown by some of the more progressive tribal leaders and it would be a sign of real progress simply for the tribe to appreciate the crucial role the court must assume in the future for a proper development.

C. Economic Development of Tribal Resources and the Tribal Governing Structure

As the following memo pertaining to research instructions for the students on this issue will reveal, our main purpose here was to analyze exactly how the governing structure of the tribes related to efforts in the area of economic development. That is, we were interested in questions such as whether or not most tribes simply authorized the tribal council or a committee set up by the tribal council as the promoters and managers of economic development enterprises or whether it was more common for tribes to simply license or authorize the establishment of separate corporations or even individuals to carry on efforts in economic development separate from the tribal council itself. Naturally, what we were seeking to establish here was whether or not there existed any kind of correlation between the success or failure rate of tribal economic development enterprises and the manner in which the enterprise was managed. As with the other areas researched, our questionnaires to the students adopted something of a shotgun approach. That is, since we did not operate on the basis of any preconceived notions we were asking researchers to take a broad survey look at the question. We felt that it was common knowledge that most Indian tribal communities existed on a sub-poverty line level of economic existence and consequently efforts in the area of economic development which were designed to increase the level of employment of tribal members as well as bring in additional income to the community take on a very high priority with

tribal peoples. Thus, economic development efforts generally consume a disproportionate amount of the average tribal council's attention, perhaps to the detriment of other roles which the tribal government is called upon to play. The following memo is included to show the reader exactly what questions were posed to student researchers on this issue.

TO: Student Researchers - Tribal Government Project

FROM: Alan Parker

MEMO NO. 3: Economic Development of Tribal Resources and the Tribal Governing Structure

By this time you have researched the questions of the tribe's structure and the court system. I have heard from everyone and as we expected there is a great variation from tribe to tribe. For example, some tribes do not maintain even a minimal court system and at this time have no intentions of doing so while others have a highly developed court with very little in the way of problems. Some tribes have done considerable work on defining and revising systems for the internal management of the tribal government while another tribe simply ceases to function whenever the chairman is away from the tribal office. It has been a very enlightening experience for us here to study all the reports since you readily get the picture that although there is great variation certain common problems and approaches to situations have emerged already. . .

Returning to the subject of this memo, I will list below some of the issues in the area of economic development and ask you to explore and respond to them as they may fit your tribe:

1. List the economic development enterprises or programs presently functioning on the reservation. Interpret functioning and 'economic development' in as broad a manner as possible. With regard to each program, describe:

a) source of initial or continuing funding
b) whether it is conducted by the tribal council (or equivalent body) in its capacity as a tribal council, or, in a separate capacity as, for example, a business corporation although utilizing the same personnel.

c) if the program or enterprise is not conducted by the council itself in one capacity or another, exactly what is the relationship between the management and decision making personnel and the tribal council. For example, is the enterprise run by individuals in their individual capacity even though they received a tribal charter or other form of sponsorship. Or, is the relationship one where the enterprise is conducted in the name of the tribe with the tribe being the recipient of the funds involved, yet the management maintains an independent status with regard to the council, free from everyday supervision and control. Or, is the council involved in the day to day operation of the business with, for example, hiring and firing power with regard to key personnel.

d) if possible, secure a copy of either initial proposal for the enterprise or progress reports describing the operation of the program and role of the tribe.

2. If possible, describe any economic development enterprises conducted by the tribe which have not proved feasible or were business failures. To the extent the information is available, describe why the enterprise was unsuccessful. If anything in the nature of evaluation reports were even submitted or on record with the tribe regarding such past efforts, secure a copy of same or digest and report on them.

3. With regard to existing businesses or enterprises, discuss whether an evaluation of the same has even been conducted and whether the tribe or the management personnel changed either the manner in which the business was conducted or the relationship between the enterprise and the tribal council or government in a broader sense. If there are any examples of this kind of situation, what were the reasons for such changes or were there any lessons to be learned from the experience.

4. With regard to funding sources for tribal 'economic development enterprises,' are there definitions of the relationship between the enterprises and the tribal government laid down by the funding source. (I.e., usually the funding source will be one federal agency or the other; to the extent you can determine, do the regulations or contract terms dictated by the agency govern the manner in which the enterprise relates to the tribal government or is the tribe essentially free to structure the relationship between it and the enterprise?) If this information is actually spelled out in the terms of the contract or other document, describe how or obtain copies of the same. Are there federal

government personnel present to supervise the enterprise, do they make periodic inspections or evaluations; if possible describe their function and who in the tribe deals with such personnel.

5. If your research indicates that there is or has been a problem in the relationship between economic development efforts by the tribe and the role of the tribal council, describe the observations and opinions of tribal leadership with regard to the issue. Recall that the Warm Springs tribal manager observed that 75% of the difficulties tribes face in carrying on such enterprises successfully is simply a question of management or the lack of it. Is the conclusion supported by the research you have done on the question? If so, what are your recommendations; and if not, what has your tribe learned that may be of benefit to other tribes?

The experience of many has been that with all the good intentions in the world, the tribe simply has an insuperable personnel problem. That is, there simply are not enough people capable of making a success of such efforts available to the tribe. If this is so, what is your prognosis as to finding such personnel or utilizing non-tribal people?

Whatever reports or copies of contracts and other relevant documents you may obtain with the cooperation of the tribe on this issue will be greatly appreciated and should add greatly to your narrative discussion. If you have difficulty making copies don't hesitate to ask us to return these kinds of materials.

1. Student Reports

Our researchers submitted some of their finest reports on the topic of the relationship between economic development efforts and the governing structure of the tribes and we urge our readers to give the reports the scrutiny they deserve. As with reports on some of the other topics, the reports constitute case studies of various economic development efforts and are an analysis of lessons to be learned. On the other hand, they also document the frustration associated with having

well laid out plans but an absence of tribal personnel to carry projects beyond the planning stage. Just as all tribes would seem to benefit immeasurably from having a tribal member available to work on their behalf as an attorney, these reports also make it evident that "tribal economic development" experts are urgently needed by many of the tribes on a full-time basis. It would be interesting to keep in mind the following question as one studies the reports on this subject: just what sort of qualifications and training ought to be possessed by such persons to enable them to be truly helpful to their tribes?

a. Laguna Pueblo: New Mexico

Prepared by Ron Solimon

Laguna Planning Commission

The Laguna Planning Commission has been charged with the role of discovering the needs of the community and designing efforts to remedy the various needs of the Laguna people. The tribal council has chosen these men to perform the most important effort of the tribe. While Laguna Pueblo is worth approximately thirty million dollars, the council has directed the planning commission to seek outside funding prior to expending tribal money. The council is not reluctant to match funds when the project will benefit the tribe as a whole. The planning commission is headed by a director who is also a former governor of the tribe and has watched and helped it through the succeeding stages of the tribe's growth. The other commissioners are made up of one representative from each of the six villages. In addition, the planning commission employs a business consultant who is a member of the tribe. His expertise has helped the commission's efforts immensely in the areas of research, statistics, diplomacy, and organization. At present, the commission includes a majority of progressive minded persons who have experience and education to bolster their endeavors.

Tribal Council's Role in Economic Development

The tribal council maintains direct supervisory control over the efforts of the commission. This means that the commission cannot proceed without the sanction of council on any matter. The commission recently requested that they be allowed to use the tribal resource people (attorneys, financial consultants) without first having to obtain permission from the council or a Staff Officer. Their request was granted on the basis of their past record and accomplishments on behalf of the tribal council. The 1974 council seems to be looking carefully toward the future of the tribe. The mining operations will probably cease in the year 1984, so the council is pressed to plan for the time when large annual revenues will be a thing of the past. Their effort to devise a system (formula) to insure the tribe's financial and economic stability long past 1984 is evidence of their concern.

Areas of Concentration

As indicated by the 'Progress and Status Chart', the tribe is concentrating on securing the immediate well-being of tribal members in such areas as water supply, housing, elderly health care, law and order, schools, et al. The tribe is not presently planning major economic development enterprises as such. The commercial and business complex will perhaps reinforce new and bigger ideas for generating revenue.

Resource People

Close to two hundred Laguna members are pursuing college degrees in many areas and approximately fifty already have degrees. There are also many tribal members with much experience who are perhaps the best resource people that the tribe has. The personnel and manpower to operate various enterprises exists, and the potential is even greater. The tribe is not afraid to use experts when they are needed. As the tribe explores new avenues of economic development, a combination of tribal members and non-tribal members will be used with the idea that the tribal members will eventually gain the necessary expertise to supervise and direct the various business enterprises without outside help.

Tribal Council and Tribal Governor v. Business Manager

Along with the plans for future economic development will come the problem of separating the tribal council's role in tribal business from its role as a policy making body. In the past and present, the council has had final approval on any decision affecting the tribe as a whole. There are plans to hire a business manager, but this move has been delayed for reasons that are hard to define. The business manager's education and background will probably call for a salary far above the salary of the governor. The tribal council will be relieved of many of the business decisions it is accustomed to making and this may cause some confusion. Careful thought, diplomacy and patience will be the keys to a business manager's success at Laguna Pueblo. A model of some form would be good for the tribe to follow so as to achieve its economic development goals and objectives.

Conclusion

As a whole, Laguna Pueblo has the potential and financial resources to establish a sound economy on the reservation. The manner in which the tribe chooses to utilize and manage its resources will dictate the success to be realized.

b. Chippewa-Cree: Rocky Boy Reservation, Montana

Prepared by: Robert E. LaFountain

Summary of Economic Enterprises Attempted:

The Chippewa-Cree Business Committee in the past has made numerous attempts to initiate and develop economic programs and enterprises. The major failures and successes related to these tribal efforts are listed and expanded on in the attached papers.

It appears that the majority of the failures have been a result of poor management selection. The tribal leaders have, a great number of times, placed tribal members in managerial positions those individuals are not qualified for. It appears that this occurs because of a good faith attempt by the Business Committee to fill any available position with an Indian (tribal member). The Business Committee has historically been concerned with reducing and/or eliminating unemployment among members and it appears that over-emphasis on this problem has caused hiring of non-qualified persons to responsible positions. It's possible the Committee has been of the opinion that these positions must be member-filled, then these Indians filling the positions can be trained while carrying out the functions of a manager. Often members with little or no experience in managerial positions of any kind whatsoever have been hired. Sad but true, too many of these individuals have failed as managers and as a result the Tribe and the Federal Government funding sources have pumped thousands of dollars into enterprises that have failed.

On the other side of the coin, the successful business ventures have resulted primarily from hiring of competent, well qualified managerial personnel. These successes are demonstrated on the attached list. The successes listed, however, are not big successes. Many of them have administrative problems and some of them are of questionable duration. The major problem appears to be a lack of cooperation by the Tribal Council to appropriate adequate funds for efficient operation. As a result, these 'successes' have to rely on what federal funds can be obtained or upon the ability of independent operators to make do with what they have. Some operators such as Dry Forks Farm management have been able to do this. And the independent operators, like the Hutton sawmill operation and the Hay Project lease operator, have less difficulty succeeding because they have had

their own funds and equipment to base a successful operation on. But other operators like the Tribal Post Plant manager and the Recreation Association project managers, who have to rely on tribal funds oron federal funding sources, have had greater difficulty operating. Their difficulties are complex - non-qualified management or no tribal funds available, or limited federal funds, or a combination of all of these.

Tribal Response to Economic Enterprise Problems

The current Business Committee is aware of the complexities involved in making a business successful and admits the necessity of hiring qualified personnel into managerial positions if the program involved is to be successful. The feeling of concern for hiring members is still there but the Committee appears susceptible to raising qualifications in order to prevent additional failure of existing and future economic enterprises.

A fear still exists among Committee members of using tribal funds for businesses that 'just might fail' but the Committee has decided to act in a manner that will conceivably result in less chance of failure of future and present enterprises. Just recently the Council has decided to circulate a notice of intent to hire a highly qualified general business manager who would advise, consult, recommend and act on economic development problems and situations. This Business Manager will have a wide range of duties and responsibilities and will be under supervisory authority of the Business Committee.

Consideration has also been given to hiring Indian management trainees under the supervision of this general manager. If this is done the Tribe could be sure that any future general managers and special program managers would be Rocky Boy Indians rather than off-reservation Indians, non-enrolled Indians, or white people. (The General Manager first hired might be white or a non-member because it is possible that no Rocky Boy member who could qualify would be available at that time.)

Recommendations:

A number of recommendations have been included in the list of enterprises attached hereto.

Generally, I would suggest that the Business Committee make a more determined effort to hire only highly qualified

managers into any enterprise the Tribe undertakes. Then the Committee must realize that even the best manager cannot be effective without sufficient capital to base his operations on. Such required funds must be made available. (Tribal funds should be used if there appear to be no federal grant funds available. Tribal funds should be used because then the Tribe has complete control of its own operations instead of some federal agency gaining an influential position as related to management of that business.)

I would suggest that the General Business Manager position the Tribe has recently made available be filled by a highly qualified, experienced individual of manager quality and that the Tribe not lower these qualifications merely to hire an Indian or a Rocky Boy member.

I suggest that the Business Committee should work in close cooperation with this proposed general manager, the special program managers, and the tribal attorney during the proposal as well as development stages of any enterprise the Tribe considers.

A question of what has happened to funds related to a number of economic development programs has come up time and again. To alleviate or at least reduce this problem I would encourage better control of tribal housing program funds through a system of at least two non-related, bonded, responsible individuals handling and carrying for and disbursing all funds. Periodic reports, evaluations, and budgets should be required of every economic program in order to maximize efficiency and to minimize corruption. (Pressure should be put on managers in the programs to account for themselves and their programs.)

I would suggest periodic evaluations of all economic enterprises and managers. In this way funds related to the many different programs could more accurately be accounted for, unsuccessful programs could be terminated or revised to make them more successful without further loss, and non-competent management personnel and employees could be quickly and effectively replaced.

I believe the Tribe should establish a program for training of supervisory, management personnel, management trainees. By doing this the Tribe will have a ready reserve of qualified personnel for special projects that will benefit the Tribe. Then the Tribe could hire its own members into the positions that require special training or high qualifications.

ECONOMIC DEVELOPMENT ENTERPRISES
PROGRAMS PRESENTLY FUNCTIONING ON ROCKY BOY RESERVATION, MONTANA

PROGRAM	PURPOSE OF PROGRAM	SOURCE OF FUNDING
Dry Forks Farm, Inc. (includes the new heifer project)	To raise cattle for producing tribal income. To produce tribal, individual income from hay production. To make starting of cattle business easier for beginners. To operate included farmlands effectively and profitably.	Began with federal revenue sharing and tribal U.S. Treasury Account funds and is expected to be self-supporting.
Tribal Post Plants *	To produce tribal income from timber products. To create employment for R.B. Indians. To maximize efficient use of tribal timber resources.	Began on tribal funds. Request for OEO funds approved for 1974-75.
Sawmill (Lease Operator)	To make loan funds available to individuals who have trouble obtaining ranch or business improvement money elsewhere. To encourage creation of self-generating, self-supporting business.	Funding by independent operator.
Oil, Gas Exploration, Land Leasing	To lease available lands for mineral, gas, oil exploitation, grazing so as to produce tribal income. To maximize efficient development of available resources.	Individuals use own funds to lease from Tribe (off-reservation individuals, oil companies, etc.)
Hay Project (Lease Operator)	To make efficient use of tribal hay lands. To generate income for the Tribe. To create jobs.	Began as tribal project with tribal funding. After failure as such, Tribe leased project to a private operator. It is now supported by the operator's funds.
Recreation Assn.* (incl Ski area facilities, Baldy Butte Inn-Cafe; ceremonial and Rodeo grounds; proposed golf course.	To construct, operate and maintain a recreation complex on R.B. Reservation; to promote any feasible recreation activity; to operate motels, cafes, etc. for producing tribal income. To create jobs for R.B. Indians and therefore ease unemployment.	Aid and grant funding from Economic Development Admin. of the Dept. of Commerce. OMBE grant money used to build up the Baldy Butte business after 'failure'.

* a program with a questionable future

ROCKY BOY ECONOMIC DEVELOPMENT ENTERPRISES

PROGRAM CONDUCTED BY:	RELATIONSHIP BETWEEN MANAGEMENT/DECISION-MAKING PERSONNEL/TRIBAL COUNCIL	EXTENT OF EVALUATIONS OR REPORTS CONDUCTED
An independent, non-member operator who is on contract with Tribe for annual salary as operator-manager (five-year contract began in 1972).	Management is on Tribe-Operator contract. The Bd. of Directors of D.F. Farms has supervisory authority over manager. Tribal Council exercises almost no authority over this corporation (except as shareholder with power to remove and replace D.F. Dirs.	Reports of budget are required annually. Manager submits a farming plan of operation twice a year. Also makes inventory of equipment; monthly operating reports, crop reports, harvest reports.
Tribe conducts the program. Hires a manager who is under Business Cmte supervision.	Tribe leaves operation of the Post plant to the current manager but Council retains power to hire, fire, influence.	No periodic evaluations are made. Reports are supposedly required but none have been submitted to the Tribe.
Independent operator upon Tribal permit and stumpage rate payment. (Tribal-Operator contract w/BIA Appraisals, recommendations) BIA supervision over land use leases.	Tribe exercises strong control over terms of the contract, rates, etc.	Evaluations are made by BIA forestry dept. as to contractor operations and conformity to contract provisions. Tribe keeps close watch over the sawmill operations (to see if if contract terms are being met).
Tribe and BIA cooperate on which lands will be available for leasing purposes.	Tribal Council determines lease provisions, specifications so in this manner can control use made of the lands involved. Tribe has no control over the management of the individual lease operation.	Reports of lessee's operations are not required to the Tribe. Evaluations are made by BIA as to results of gas, oil, mineral explorations, availability of grazing lands, land use reports.
Independent lease operator conducts the project. Lease agreed to between Tribal Council and lessee on a percentage of crops basis.	Tribe signs a contract lease agreement with the operator. Lease operator is manager. Tribe gets a 40% cut of crop production. Tribe maintains very little control over the management and has no Tribal fund by which to exert influence.	Budget reports submitted periodically (although such reporting has not been adhered to strictly).
Bd. of Directors of this corporation has responsibility of carrying out program effectively and of hiring, hiring managerial personnel.	Manager hired by the corporation Bd. of Directors. Business Committee appears to exert very little control over this manager position.	Annual progress reports were required to be submitted to EDA while that grant was in effect. Tribe has failed to require and adhere to periodic reports.

ROCKY BOY ECONOMIC DEVELOPMENT ENTERPRISES

CHANGES TRIBE HAS MADE IN MANNER OF CONDUCTING THE BUSINESS	EXTENT TO WHICH FUNDING SOURCES DICTATE MANAGEMENT OF THE BUSINESS
Tribe has almost totally left the operation of the D.F.F. to the manager and the Board of Directors.	Tribe exercises very little control over this operation. Such control has not been necessary because this enterprise has been satisfactoryily successful. Federal revenue sharing program exercises no great influence over this program.
Tribe limited Tribal funds available and forced a request for OEO funds. (The OEO funds have been granted.) Management is still hired by Tribe. Tribe still hires this manager by informal agreement.	OEO maintains authority to evaluate, keep and require records, audit the enterprise and to terminate funds it they are not used as per the proposed budget narrative of the project.
Tribe tried to make Tribal sawmill operate effectively but failed. Tribe considered the amount of timber resources available and determined that small independent timber operations would be most feasible. As a result, the Tribe switched to this method of operation.	Management is independent with no Tribal control other than contract provisions requiring special actions. Tribe exercises no influence as a fundirg source.
Stricter provisions have developed in lease agreements. Thus Tribal resources can be better protected and Tribe can better protect its own interests.	Tribe is not a funding source for individual leases but can force operator-managers of the lease enterprises to be consistent with their lease agreement provisions.
This project was formerly a tribal project. Now it is lease operation and it is successful and generating Tribal income.	Self-supporting under supervision of the independent lease operator. Tribe has little, if any, control over this management which operates on a percentage basis.
Tribe has hired a number of different managers in an attempt to improve income producing ability of the Baldy Butte Inn and Ski Complex.	Federal funding sources make no deliberate attempt to dictate the management. The management controls are left primarily to the Board of Directors of the Recreation Association.

ROCKY BOY ECONOMIC DEVELOPMENT ENTERPRISES

OBSERVATIONS AS TO WHY SUCCESSFUL	POTENTIAL OF THE PROGRAM AND/OR RECOMMENDATIONS
Good management. Qualified operator-manager makes the project successful. Little Tribal influence over the management appears to have helped rather than hindered the project.	Respectable profit in 1973 (first full year). Anticipated that a 'huge' profit will be made this year. Under similar type of good management in the future this operation could continue indefinitely as a self-supporting enterprise.
Successful (not producing great profits but jobs are continual) because current manager had and has 'donated' much of his own time and has worked at very low wages. Funding source limitations have restricted the success of this project.	Has been operative three years under Tribal control with limited funds. With new OEO funds the manager will be able to buy necessary equipment. Then the potential of the program fulfilling its purposes is great.
BIA supervision and Tribal concern for contract provision performance are the major factors that have determined the success of this operation. The operator has a self-interest which encourages successful management.	This independent lease operation is apparently a good Tribal investment. Income from the lease is minimal but the improved roads, better grazing access, better fire protection, new seeding and increased member employment resulting from the operation make it worthwhile. Similar investments are encouraged.
BIA 'supervision' over leases and Tribal concern for a fair deal have resulted in successful lease agreements.	Good possibility of gas, mineral, oil leasing, but land leasing, as for grazing, has become restricted and unavailable for outside operators. Tribe and BIA work well together on leasing projects and such an arrangement is encouraged. Tribe should assure strict provisions in leases to benefit of Tribe.
Successful because Tribe has delegated management authority, through leasing, to an apparently competent operator.	A continuing source of Tribal income. If management continues on a lease basis with a crop split the Tribe can probably expect a continual income. A Tribal hay project under competent management should be considered again.
Has gone 'broke' a number of times due to poor management. Fair management has caused this program to increase its income a few times. (Its budget status is questionable at present)	Has been operative three years. Recreation appears to be a good investment in this area. Potential for producing Tribal income thru recreational development is great if qualified managers are hired. Poor management could break this Tribal enterprise again.

ECONOMIC DEVELOPMENT ENTERPRISES THAT HAVE FAILED (OR WERE NOT FEASIBLE)

PROGRAM	PURPOSE OF PROGRAM	EXTENT OF FEASIBILITY STUDIES CONDUCTED PRIOR TO INITIATING PROGRAM	FUNDING SOURCE AND CONTROL IT EXERCISED
Tribal Bird Farm	To make game birds available for shooting (at a fixed rate per bird). To create jobs, ease unemployment. To generate income for Tribe.	A feasibility study was made. Determined to be a feasible project.	Government grant and tribal money was available. Tribe was virtually in full control over management. Tribe had power to hire and/or fire management, employees at will.
Livestock Project	To raise livestock for sales purposes. To increase income of Livestock Assn. members. Then to increase Tribal income when program was under Tribal control.	No independent feasibility study was made. Only speculations were made.	Funding by Tribal Livestock Assn. Control by Livestock Assn. representatives until Tribe took over control.
Kenneth Wornath Lumber Co.	To create a five-year sawmill operation which would produce Tribal income. To hire R.B. Indians and thus ease unemployment of members of the Reservation.	Feasibility study was conducted by Mont. St. Univ. feasibility study group. Conclusion: feasible for a a small five-year operation following a large capital and equipment investment.	Funded by OEO grant with matching funds by Tribe of up to 20%. Tribe had contract with independent operator for him to manage and to produce and sell lumber. As a result Tribe had little control over management practices.

ECONOMIC DEVELOPMENT ENTERPRISES THAT HAVE FAILED (OR WERE NOT FEASIBLE)

EXTENT OF EVALUATION REPORTS MADE	OBSERVATIONS AS TO WHY IT FAILED OR WAS TERMINATED	GENERAL OBSERVATIONS
None made periodically by Tribe or Bird Farm management. No evaluation reports were required to be submitted.	Poor management, disorganization. Tribe appears to have hired a number of managers who weren't qualified for developing such an enterprise. Non-feasibility of the project in light of already available game birds.	Bird Farm lasted about three years. Feasibility reporters may have been mistaken as to the practicality of such a program. The market for game birds for shooting purposes may have been over-rated.
Reports were made while under Association control (BIA was cooperating). No reports were required under Tribal control, few were made.	Poor management personnel choices by Tribe (non-qualified personnel). Tribe failed to make enough money available to maintain the program after Tribe gained control. Assn. members withdrew.	Operated well under Livestock Assn. control (15 years). Failed under Tribal control. This program appears to have been feasible. It operated for years without Tribal interference. It would still be feasible under good, qualified management. Dishonesty by management may have been a factor of failure. It appears that a large number of birds 'disappeared'.
No progress reports were submitted by the management. No monthly or periodic evaluation of progress.	Poor management (independent manager - non-tribal). Tribal funds not available or not appropriated to continue the operation after OEO funding no longer available.	Lasted only about a year. It's possible that the non-Tribal manager exercised unethical and illegal methods of operation which caused its failure. There are probably not enough timber resources on the reservation for any large scale lumber operation.

c. Cherokee Nation: Oklahoma

Prepared by: Robert Lowery

The main thrust of the Cherokee Nation of Oklahoma has been toward economic development. In the early 1950's the tribal government did not exist and the assets of the tribe amounted to a little over nothing. Today the government is heading toward the realization of being able to serve the people and assets are over $30 million. The structure of the tribe, being what it is because of the Act of 1906, is no key to how the development has occured. Numerous foundations and wholly owned corporations have been set up to accomplish the tasks of economic development. The overall picture is anything but clear and there seems to be no central control of any type, although this is being looked into today by the tribe.

Probably the best way to examine the economic development of the Cherokee Nation is to look at the various organizations set up to accomplish the specific tasks. The first three are foundations which were used to secure funds which the tribe as an entity could not secure.

Cherokee National Historical Society

The very first organization to try to secure funds for the economic development of the tribe was the National Historical Society, organized as a non-profit foundation to promote Cherokee History and Culture. Assets include an Indian village, an amphitheatre which seats 1800, where the drama of the Trail of Tears is performed in the months June-August, and a museum they are presently building. Over 100,000 people have seen the drama now in its sixth year. The Historical Society employs over 200 people, but there are no training programs - which is extremely poor since this is probably one of the most important economic bases of the tribe.

Cherokee Foundation

Set up primarily to fund a housing project that would be separate from the regular housing authority. Assets include a 188 unit apartment complex. It is composed of seventy percent low income and forty-five percent members of the tribe. Employment is small here, but again there is no training program in something that would work very well with one.

Jelano Cultural and Economic Development Authority

Newest of the funding organizations and is set up on a fifteen (15) year lease-back agreement with the tribe. Assets include the sixty-eight (68) room Tsa-La-Gi Inn, Restaurant of the Cherokees, Osiyo Club, and the Arts and Craft Shop.

The major problem with all three of the above is that direct control by the governing body of the tribe is nebulous, although least so by the last one. Also, no organized training program exists in any of these projects, even though this is where the main assets lie. This only points out the poor central planning that exists - or might it be better said that does not exist at all.

There are also several wholly-owned corporations:

Cherokee Nation Industries

Building everything from calculators to chairs, this is one of the highly successful ventures of the Cherokee Nation. It is set up on a profit-sharing basis and eventually will be owned by the employees 100%. CNI takes farmed-out work and is very flexible. One problem of CNI is sporadic employment and off-season contracts.

Cherokee Nation Builders and Cherokee Nation Construction Company

Both are construction firms set up primarily to train in various arts of building. These companies are used whenever possible on any construction done for the Tribe.

Cherokee Nation of Oklahoma Complex

The complex in which all tribal offices are located is owned by the Tribe. In addition, the offices used by the BIA are also owned by the Tribe and leased out to them. The Tribe also owns a utility company which furnishes power to all tribal installations and a cattle unit is in the formative stages under the land management department.

Conclusion

The Tribe is well endowed with resources and economic development is progressing well. What is primarily needed is central control and some long range goals established as to what the Tribe wants to accomplish with all of this. The

percentage of membership that receives benefits other than pride is extremely small and some reassessment of what the Tribe is trying to accomplish is needed badly.

d. Pueblo of Santa Clara: New Mexico

Prepared by: Jody N. Folwell

Economic Enterprises

The Pueblo of Santa Clara has a minimum of economic development. There are three sources of economic income for Santa Clara: land leases, (forest) recreational sites, Puje Cliff sites and Puje ceremonies.

The commercial land leases are in the general area of Espanola and Fairview, New Mexico. The total acreage of leased land and specific amounts received for the commercial leases are generally not disclosed to anyone but the council members who control and regulate the leases.

The recreational sites, sale of permits for forest area, and camping, picnicing and fishing permits are also controlled by the tribal council. The yearly Puje ceremonies are conducted by a committee which is controlled and regulated by the tribal council. The source of funds for maintaining the recreational areas and the upkeep of the Puje cliff houses comes directly from tribal funds. The tribal council maintains complete control over these particular economic enterprises.

At the present there are no major or stereotyped economic enterprises but future comprehensive plans and programs are being made. At the present the comprehensive plans and programs for the economic development of the tribe are in the process of being realized. Thus, the council prefers not to disclose the materials and information to the public.

Plans are being formulated to establish a co-op in the village to serve only the members of the tribe. The initial funds will be appropriated through private sources.

Recommendations

1. Delegation of authority should be made to the different administrative staffs, so that services to the tribal members can be improved and developed.

3. The establishment of commissions for land, water, health, utilities, etc., should be instituted for the accomplishment of goals set by the people and tribal government.

3. Skills and techniques should be acquired for the management of the different economic enterprises that are being planned.

4. Formulation of plans for future industrial development and commercial enterprises is needed.

5. Plans for the acquisition of a business manager should be made.

e. Papago Tribe: Arizona

Prepared by: Hilda Manuel

The economic development profile of the Papago Tribe has been characterized by several endeavors. The oldest and traditional one has been cattle raising. Much of the reservation is used as range land; for example, a square mile of forage supports less than four head of cattle a year. The Tribe owns a small registered herd of Hereford cattle, which it loans to individual cattlemen for breeding purposes. By selective purchasing of quality bulls, both the tribally owned and individually owned herds are improved. However, within the past five years drought conditions and sparse vegetation has reduced the growth of the cattle industry.

Probably the best potential for economic development is the significant deposits of high grade copper ore found in several areas of the reservation. After extensive

explorations three large mining companies - Hecla, Newmont and American Smelting & Refining Co. (ASARCO) - have each opened full mining operations. The mining income is divided equally between the Tribe and the district where the mine is located. Mining income is projected to solely support the tribal budget by 1975. In conjunction with these mines, a mining institute was opened and training is available for Indians interested in mining. Several hundred are expected to complete training and be hired as regular workers with one of the three operating mines.

Another economic development project underway is the Papago Chemicals and Explosives, Inc. The Tribe in a joint venture with Phillips Petroleum Oil Company has set up a processing plant on the reservation developing chemicals for explosives and fertilizers. The project is yielding some profit to the Tribe. The manager of the corporation is a Papago who works with the Indian and non-Indian Board of Directors. Balance sheets of monthly income are submitted to the tribal officials.

The other big project undertaken by the Tribe is the creation of the Papago Tribal Utility Authority (PTUA). PTUA is negotiating a two million dollar loan from REA at 2% interest. At the present time PTUA is providing electrical services to Hecla mine. By fiscal year 1976 PTUA projects to control the reservation's electrical needs. PTUA is managed by a non-Indian with a Board of Directors consisting of both Indian and non-Indian members. Budget expenditures are submitted to the tribal officials on a quarterly basis.

On the northern end of the reservation an estimated 10 million dollar dam and reservoir has been constructed by the Corps of Engineers. The dam is to provide run-off water control and irrigation water. From all indications there is no real benefit for the Tribe. The main benefit will be for surrounding communities of non-Indian populations since the dam will prevent flooding of those areas. Because of the evaporation rate expected, nothing but a 10 million dollar mud hole will be left to the Tribe. Any efforts to develop recreational facilities within the dam area will be hindered by the potential mud hole.

Briefly, other areas of economic development ventures include an arts and craft co-op which promotes traditional skills of basketry by marketing about 3,000 baskets annually at local fairs and shows and a farm cooperative of 1,200 acres which grows and markets fresh produce. Along the agricultural development plan, 10,000 acres of fertile virgin land, Papago Farms, has been set aside for farming. The

feasibility study showed that Papago Farms can provide produce and grazing feed for the whole state of Arizona. The Farms had been leased to a private group about ten years ago, but their efforts proved a failure. The failure resulted from the fact that there is no paved road into or out of the area, and with the heavy rains the roads were in bad shape. As a result the produce spoiled before it could be shipped out.

However, the Bureau of Indian Affairs has commited funds to grade and pave eighteen miles in and out of the Farms area by next spring. At that time the Tribe will start farming operations.

There are also individually owned businesses which were chartered as tribally owned but which have been turned over to individual management. Here the Tribe has either secured a loan or co-signed with the individual to obtain the business.

An example of an unsuccessful economic development project is the development of an industrial part on the San Xavier reservation. The park, which comprises about forty acres of land, was built with a loan-grant from the Economic Development Administration. To date it has not attracted any significant business enterprises.

For a sound economic development program, several factors need to be considered. It seems clear that the Tribe alone cannot coordinate an economic development program with its lack of expertise in business matters. It must, therefore, rely on the knowledge and skills of other people whether they are Indians or non-Indians. Another possibility is to consider a revision to the constitution which will allow a distribution of revenue to all districts, so that they might develop a program for economic development.

f. Oneida: Wisconsin

Prepared by: Gerald Hill

Introduction

There are no natural resources available for development on the Oneida Reservation in Wisconsin. At one time there was timber but that has long since been depleted.

The tribe presently has some 2,500 acres held in trust by the U. S. Government. This land is leased or assigned to tribal members for two and a half acre home sites or larger agricultural assignments or leases. Much of the land assigned for home sites is sub-marginal.

The sub-marginal land cannot pass perk-test requirements of the PHS and, therefore, many members of the tribe are denied benefits of programs designed to raise the level of residence sanitation facilities on the reservation.

The sub-marginal land itself seems only nominal. However, the tribe has initiated an industrial park on the tribal land adjoining Green Bay.

The development of the industrial park will be the major subject of this report because it is apparently the only development resource. As far as other means of land resource development, i.e., recreation or tourism, those would be impractical or impossible because the land is not contiguous, and the small creeks running through the reservation are badly polluted. The general area is now farm land with some woods, nothing to perceivably develop for either recreation or tourism.

Discussion

The Oneida Industrial Park was conceived in 1967. It was commenced with the formation of the Oneidas of Wisconsin Industrial Development Corporation.

The industrial park covers 31 acres on the outskirts of Green Bay. The general area is and has been developed as an industrial area by the City of Green Bay. The Oneida Industrial Park is surrounded on three sides by the Packerland Industrial Park and on the fourth side by U. S. 54, a major highway. It is developed with paved roads, sewers, electricity and a railroad spur.

Since its inception the industrial part has remained a theoretically appealing business venture. Yet, despite the apparent potential, the future of the industrial part has become an uncertainty. The reasons for the uncertainty are difficult to isolate or identify.

There is not now nor has there been any lack of good faith or energy by the tribe in seeking to put the industrial park on a revenue generating basis. The study prior to initiation of the industrial park seems to have been undertaken with care. The solicitation of businesses to locate in the park was carried out energetically, although without much success. The investigation and selection of businesses to locate in the park seemed thorough with financial statements, etc., issued from Dun and Bradstreet and other such organizations. When the tribe was required to raise $8,000 as their share of the industrial park enterprise, shares were sold to tribal members at $1.00 each, totalling $12,000, indicating keen community interest. Still the industrial park of the Oneidas is in economic trouble.

Although all due care was taken to insure success, several factors stand out as possible reasons for the present difficulties. One of these is the procedural requirements of the BIA regarding leasing of trust land. Because development requires money, the security for development capital is usually mortgages against the land to be developed. On trust land, this requires approval by the BIA thus banks and other lending institutions are necessarily wary of entering agreements where their loans cannot be secured by such conventional methods. This is not an impossible barrier but is a problem to be reckoned with in development on Indian land.

Another distinct but related problem is the need for a professional developer. This need was recognized early. Proposals were made to various private sources to fund such a position. However, the amounts asked were modest and, in my opinion, fell far short of what would be an adequate salary for an experienced full-time developer with a successful record. In any case, the proposals were met with failure. The current problem is intertwined with this continuing need.

At the annual tribal meeting, July 6, 1974, a special meeting was called with the Business Committee, the OWIDC and the Area Superintendent. A resolution was passed requesting the Area Superintendent to seek funds in the amount of $35,000 to hire an experienced successful developer to get the industrial park going.

In my opinion this resolution had little force because it was a bare request for help from the BIA but there was no apparent commitment from the Superintendent other than that he would try his best.

Related to the two above problems but also distinct is the current situation. To shed light on this it is necessary to go back to the beginning.

When the OWIDC was formed, it was on the premise that they would oversee the development of the industrial park. In order that they be able to secure necessary funding from SBA it became necessary to form another corporation. The development was encouraged and urged by the SBA. This second corporation, Standing Stone Corp., subleased a site from OWIDC for the purpose of developing one building for the first business to go into the industrial park. A building was erected for this business on one of the sites and the business, a musical instrument repair company, commenced operation. The loan for the building was obtained from the University State Bank of Green Bay, totalling $120,000 - 70% of which was guaranteed by SBA. The security for this loan was the land on which the building was situated. There is now a question of whether the sublease to the Standing Stone Corp. was ever approved by the BIA. The complication this raises is whether the agreement made with the bank is void or voidable, a clear legal question. A further complication is that the music business ceased operation February 1974 and is the basis of the current problems.

A developer, a tribal member, was hired to start work Aug. 1, 1974, but he will be training and will be expected to work with the professional developer to gain the necessary experience. This is a stop-gap measure with success contingent on being able to hire the professional developer. The situation would seem to be less than appealing to a developer, making his availability less probable.

Another problem is that the lawyers retained by the OWIDC have apparently not been knowledgeable in tribal law, not an insurmountable problem but pointing the need of Indians for attorneys qualified to assist in both administration and tribal business ventures.

There have been two lawyers retained by OWIDC and another has recently been retained. The first two were released or resigned for reasons of dissatisfaction of OWIDC with conflicts of interest. The newly retained attorney asked and received a $200 retainer with a verbal

understanding that he would continue to represent OWIDC and would keep track of his time for later payment. The fact that he missed the first requested meeting with OWIDC would seem to put the members on notice as to possible reticence of the new lawyer.

Generally, I feel that tribes and individual members take a more optimistic attitude in relations with lawyers, Indian or non-Indian, than their non-Indian counterparts with whom they must deal, both in governmental bureaucracies and commercial enterprises. This places Indians at a disadvantage because judgment decisions which should be made by the client are often left to an attorney. This should be an educational function of the Indian Lawyers organizations.

At the last meeting of OWIDC I recommended that the board members get together before the meeting with the new attorney so they could consolidate their position, i.e., all members should be aware of the direction to seek through the attorney, and secondly to prepare a synopsis of OWIDC so they would not have to pay the lawyer to look through a stack of various papers and documents and arrive at his own conclusion.

To the end of the second suggestion, I have undertaken to do a chronology of all correspondence and documents I was permitted to examine. I was given a stack of various files of letters, minutes, agreements, and related materials about ten inches high. This in itself reinforces an early observation that filing methods in tribal channels of communications are less than efficient. In tribal administration the problem it creates is tolerable, at best, but disastrous in a business venture. For example, the lease agreements in question are not available. This is not so important to this report; however, in my opinion it should be available not just for the summer legal intern but for all interested members of the tribe, particularly those who invested in OWIDC. This is a responsibility I feel has been overlooked not just with OWIDC but other tribal organizations or entities whose decisions affect the entire tribe directly or indirectly. I say this fully aware that meeting dates are usually posted and that it is easier to identify a problem than present a solution or alternative. Still the fact is that poor communications exist within the tribe irrespective of whose fault it is.

Conclusion

There are only limited resources for economic development on the Oneida Indian Reservation in Wisconsin at this time. Land for recreational or tourism development does not exist. Mineral resources apparently do not exist. Timber has long since ceased to exist as a real resource. A tribal farm has been mentioned several times but details of its operation have never been spelled out and for practical considerations of this report it is dealt with as non-existent.

The land retained by the tribe is, for the most part, sub-marginal so that even individuals may not be eligible to improve their residential sanitation facilities with PHS programs designed for that purpose. Still there has been a continuing attempt to develop the resources of the land in an Oneida Industrial Park.

The Oneida of Wisconsin Industrial Development Corporation was formed in 1967 to oversee the development of the Industrial Park. The Industrial Park is located on the outskirts of Green Bay bordered by other industrial developments.

The OWIDC subleased a site in the park to the Standing Stone Corporation, a musical instrument repair business, which operated a short while and finally failed. The reasons for the failure, which represents the only business venture, are not simple to isolate.

I have used the OWIDC as a means of making observations on various aspects of economic development on the Oneida Reservation of Wisconsin. The problems are both legal and practical.

The basic legal problem I can now ascertain is whether or not the sublease which was entered into by Standing Stone and the University State Bank of Green Bay was approved by the BIA. This could make the agreement void or voidable, which could be a significant advantage to the Oneida Tribe. Unfortunately, I have been unable to locate a copy of the sublease. The tribe is basically uncertain as to their position regarding the two corporations, the SBA, the University State Bank, and the BIA.

In order to resolve the situation, the tribe has by resolution of the business committee sought to have the BIA Area Superintendent first seek means of funding a

professional developer and, second, to arrange a meeting with all the parties involved in the current difficulties in the Oneida Industrial Park.

The OWIDC has now retained the services of a new attorney, the other two having resigned or been let go. The relationship with the attorney is a key issue here and the source of my first recommendation.

I recommend that the Indian Lawyer's organizations undertake a program of education, the object of which should be to aid the tribes, Indian Organizations, and individuals in selecting attorneys to represent them in their businesses and governmental administration.

My next recommendation is directed to the tribal government itself. I would urge that the various tribal organizations, corporations, and other legal entities seek all available methods of improving communications within themselves so that they may present a unified direction to their legal counsel.

It seems to me grossly unfair and, in fact, a basic violation of the federal government trust relationship with the tribe when the BIA or any other branch of the federal government is allowed to insufficiently support tribal economic development, particularly when industrial development is the means to be used. The tribe has a large stake in the success of any tribal business venture, and the general tribal council members are affected directly or indirectly. It must be borne in mind that the Oneida Industrial Park is currently the only developable resource for this tribe and should be given top priority in considerations from BIA and Indian Lawyer organizations. In my view, there is an urgency to this problem which falls within the scope of the BIA's trust relationship to be a real help in solving a complicated problem.

I have mentioned the need for improved management and administrative procedures. The tribe has continued to function under an increasing paper load and has recognized and sought help in alleviating the problem. As it pertains to commercial ventures, the channels of communication must exist clearly within the tribe as they do with the business persons with whom they must deal if any success is to be expected.

I feel the economic development on the Oneida Reservation can and will occur. Whether sooner or later will

depend on the assistance of lawyers and other commercial experts and the necessary funding from the federal government to meet the expenses of these experts.

2. Commentary

Student research reports reflect a concern for the following common points:

1. In the area of economic development, proper business management is of overriding importance. As the student reports detail, where proper management is present (other things being equal) economic development enterprises have a good chance for success. Where there is poor management or simply a lack of good management, an otherwise successful enterprise is doomed to failure. Without getting too specific, it is apparent that by management the researchers meant both overall business enterprises of the tribe considered as a totality and the management of individual projects considered separately. Consequently, knowledgeable tribal leaders, as reported by the students, recognize the importance of identifying the position of a tribal business manager and stress the importance of having that person or position delegated sufficient independent authority. It is also recognized that "good management" is a combination of ability and experience and is not something which is acquired simply by being placed in a particular position. Some of the students point out that at least in the past tribal council leaders have given priority to employing tribal members in economic

development enterprises over employing qualified personnel. That is, they would rather see a tribal member take on a responsible position with the expectation that he would acquire management skills on the job.

However, it now seems to be generally accepted that it is doing a disservice to the inexperienced tribal member to place him in such a position where the probability is that he will not be successful while, at the same time, jeopardizing the overall success of the project to the overall detriment of the tribe. Of course, this may be a hard lesson to learn in the context of what might be a political situation.

As reported by our students, the more experienced tribal leaders seem to take the position that when seeking to fill management positions in economic development projects they will seek the best qualified personnel available regardless of tribal membership of not. But, at the same time, they will insure that a training program for tribal members is instituted in order that tribal members might have the opportunity to acquire these management skills and thus eventually take over the project. A final point to be noted under this general topic is the question of salary levels. Often as in the past an inexperienced group of tribal leaders may be tempted to set a salary level for a key position such as tribal business manager at an unrealistically low level. Undoubtedly, this reflects an experience of trying to subsist in the kind of economically depressed society common to most tribal communities. For example, one tribal group was reported to be advertising the position of tribal business manager at a salary level of $16,000 per annum. At the same time, the description of the qualifications which they expected

on the part of applicants was not in line with that salary level. In our experience, the kind of person possessing the qualifications listed could demand a salary beginning in the middle twenties without any hesitation. Incidentally, many tribal councils may have something of a mental block when it comes to considering such a salary level because in their experience the most highly paid person in the tribal personnel structure, the tribal chairman, generally receives a salary in the $10,000 level. Thus, they would be in a position of paying a business manager something like twice as much as the tribal chairman would be paid. It would be interesting to compare the personnel structure and salary level of any representative tribal community to that of a neighboring city or county government. Such a comparison may prove enlightening to tribal leaders on this point.

2. Another major point stressed by our researchers in their study of this question was the interrelation between the role of the tribal council as a legislative body and that of the tribal manager or administrator as an executive body within the tribal government. In nearly every case the tribal community did not draw clear lines to distinguish either the structure or the roles of these two arguably distinct entities. This lack of clearly distinguished roles in most cases is easily explained by reference to the historical development of the tribal government. In the period immediately following implementation of the Indian Reorganization Act the record shows that the tribal council was <u>the</u> government for most tribal communities. There were no separate tribal courts, no tribal law enforcement personnel

and certainly no tribal administrative body. However, as we have noted earlier the past forty years have witnessed a steady growth in tribal governments. In most cases it is no longer defensible to concentrate every responsibility and all authority in the tribal council itself.

While our research in this area was not of such a technical nature as to enable us to draw our chart in any reliable way, the correlation between the separation of legislative and administrative functions of the tribal government and the success or failure rate of tribal economic development efforts, the evidence certainly seems to point in that direction. It is clear that the average tribal council, if viewed simply as a legislative body, not only has a very important responsibility and a role within the tribal governing structure, but also has more than enough to do to fulfill this role without also assuming the responsibilities for all the administrative functions of the tribe. We should be quick to point out that most tribal leaders, according to our reports, do recognize this fact and the clear trend is toward a more clear distinction between the legislative and administrative roles and a separation of these two different functions.

3. The final point which was stressed in common by our researchers was the general question of technical support for tribal councils in their deliberations concerning economic development efforts. Engineers, economists, lawyers, business management experts, and other professional personnel are all needed by tribal councils both in the planning and development phases of the various economic development efforts reported

on. Some tribal groups like the Laguna Pueblo, for example, with their uranium mining enterprise are obviously able to afford such advice on their own. However, most tribes are not as fortunate as the Laguna Pueblo and for these tribes it would seem that the federal trustee ought to have a clearly defined responsibility here. On this point a general caveat ought to be made. That is, it has been the experience of some tribes, particularly in the development of natural resource potential, that not enough attention is paid to the cultural needs of the tribe as well as the economic needs. This entails careful planning to ensure that the wisest use is made of available resources rather than simply the most opportune use given the demands of the moment. On this point it is difficult to get specific without going into a detailed explanation, and perhaps we can amplify on this point later in the report.

D. Administration of Tribal Governing Services

In relation to the issue of "administration of tribal governing services", student researchers were requested to focus on two main points. In the first place, we were seeking an inventory of governmental services as carried on by those tribal governments participating in the project. As our explanatory memo attempts to make clear, we asked the researchers to attempt to distinguish between "governing services" and those other functions of the tribal government which are more in line with their role as a business entity. Unlike other comparable units of local government within the states, Indian tribes have traditionally directed a great deal of effort in the area of economic development of tribally held or owned natural resource potential and other business potentials as the preceding section of this report attempted to explain in detail.

Briefly, there are two main reasons for this larger role of tribal governments in the business or economic development area. First of all, unlike most units of local government, tribes hold reservation land areas in common, that is, under tribal ownership as opposed to individual ownership by tribal members. Of course there are exceptions to this pattern of tribal ownership since many tribes were allotted either entirely or in part with individual tribal members holding parcels of the reservation as allotments. But even in these instances so-called "allotted" reservations still hold the natural resource potential of the

tribe in tribal ownership. By contrast, units of local government under the state system in general do not own or hold title to large land areas. The pattern is for land to be held either in individual ownership or in state ownership, with perhaps separate agencies under the state government having special use rights to the areas depending upon the functions of the agency. A city, municipality or county government might own in this sense common areas such as school plots, sewage treatment plants, recreational sites, city parks, etc. But they do not have title to large blocks of land which can be the source of natural resource development. Consequently, these kinds of units of local government do not find themselves in the position which tribal leaders do of being responsible for the proper use and development of large areas of land and other natural resource potentials.

The second distinction between tribal governments and comparable units of local government under a state system is that in general the tribes do not have the equivalent of a state government to fall back upon for governmental support, direction and organization. This comparison is particularly apt for those local governmental units under a state system located in relatively sparse population areas, which is the situation for most Indian tribes. In these instances local citizens can be assured that state governmental institutions will provide all the governing services which are necessary if they - that is, the local citizens of a local geographic area - do not have the resources or desire to organize and fund a local governing body on their own. In this sense, the extent and degree of local government options which

they want to pursue can be considered as something of a political luxury instead of a necessity. Tribal governments, on the other hand, because of jurisdictional principles laid down by federal law, are not an integral part of the state governmental structure and, as such, are not eligible automatically for the complete range of governing services administered by state governments. This situation, dictated as it is by federal law, is considered a plus by the great majority of Indian tribal leaders since it is just the other side of the coin or the corollary to the principle of self-government.

As the student reports make clear, there are certain types of governing services administered on Indian reservations by the state government under the aegis of such federal laws as P. L. 280, referred to in one of the reports under the tribal court issue. But, in general, these services are meager in comparison with the total needs of the local tribal communities for governing services. As we have also alluded to, the tribes do have a more direct relationship with the federal government which is comparable to other communities under federal jurisdiction; but the federal government has simply not designed structures to accommodate the needs on a local government level.

As a consequence, Indian tribal governments traditionally are faced with the need to administer the total range of governing services which any comparable local community requires. But, as we see from the student reports, most tribal governments simply do not have the resources or personnel to operate what might be considered a complete

local governmental unit. Generally these limitations are not in a critical area, but in some cases they are and this gives rise to very unfortunate situations. At any rate, it is very interesting and enlightening to review the student reports simply to take note of the various kinds of governmental services now being administered by those tribes participating in the study. Thus, in itself this inventory does much to amplify an answer to the question of "what do tribal governments really do?"

The second point which we asked the students to address themselves to in this area of governing services was the potential for a conflict of interest within the tribal government between its role as a business entity and its role as a government responsible for the total needs of its constituency. Recognizing the dual role in which many tribes find themselves placed, it was our impression that there are instances in which these diverse interests of a tribal government might give rise to a conflict, and we felt it might be interesting and illuminating to study the dimensions of such conflicts and the ways in which tribes were dealing with the same. As the reader will note after reviewing the student reports, our study, limited as it was, revealed that this was not a significant problem in the minds of our researchers. The following memo addressed to the student researchers on this issue may provide additional explanation of the scope of this question.

TO: Student Researchers - Tribal Government Assessment Project

FROM: Alan Parker

RE: Administration of Tribal Governing Services

In prior memos I have asked you to analyze and describe the structure of your respective tribal governments, the tribal judicial system and the relationship between economic development efforts and the tribal governmental structure. In addition to this memo, the two remaining areas to focus on are the relationships between BIA operations and the tribal operations and problems related to application of the Indian Civil Rights Act. As I have attempted to emphasize in prior memos, our main task is to isolate and define the issue we are concerned with while understanding the overlap and interrelationships in the whole area of tribal government.

From this point of view, my understanding of the question of 'administration of governing services' are those services the tribal government necessarily takes on in the process of meeting the needs of the tribal community for a government as opposed to or distinguished from those functions of the tribe when it acts in the capacity of a purely business entity. That is, as manager of tribal resources the tribe is generally acting as any other business would concerned with developing and managing its natural resource potential. Of course, other operations of the tribe will fall within this category of 'business function.' For example, initiating and operating recreational facilities, attracting industrial complexes or contracting for tribal business ventures such as pottery making, arts and crafts, etc. Particularly in this latter category of operations are instances where the tribal government is acting in a dual role, i.e., business and government.

Social service activities, under the general category of health, education and welfare, the regulation of commercial and industrial activities, law enforcement, administration of land use within the reservation, domestic relations, etc., are examples of areas in the governing services category. Another vital role the tribal government performs in this area is that related to maintaining government revenues needed to sustain the administrative entity (taxation, licensing fees, etc.) As you have seen, another source of revenue in the implementation of such governing services are those various governmental agencies such as BIA, HUD, LEAA, EDA, etc.

There are no fine lines for the most part whereby distinction can be drawn between tribal activities or roles in the government services area and those activities in the business area. However, to the extent possible and for purposes of this memo I would like: (1) a delineation and listing of those tribal activities which you feel fall within the category of governing services, business activities and those where the tribe acts in a dual role; (2) analysis and description to the extent possible of the difficulties presented for the tribal governing structure by real or potential conflicts in the governing services vs business entity role. This is assuming that your research has revealed such conflict situations.

As you no doubt recognize, this whole area can become very abstract and theoretical. What it amounts to in my opinion is a thoughtful analysis based upon the understanding you have to date as to what the tribe actually does. We assume the validity of the premise that the tribe is thrust in a conflict of interest situation simply by virtue of the fact that it is on the one hand owner and administrator of tribally held natural resources and other business potentials, and, on the other hand, responsible for the impartial administration of those services which any government necessarily takes on for the common and individual good of the membership. Should your analysis reveal that there is a conflict between these legitimate tribal interests, it would be most useful to study the dimensions of such conflict situations in order to determine what sort of collective statements ought to be made. If there are no such conflicts, or, if the tribe has successfully resolved them, how they were resolved would also be significant information. Also, simply the listing and identification of those governing services of the tribes participating in the study will add to our knowledge about what tribes are really doing.

Tribal Constitutions: We have consistently attempted to relate the areas studied to the tribal constitution and analysis of how the tribal constitution defines, aids or impedes the operation of the tribal government in any particular area. As I mentioned, since this particular question as to administration of governing services is most apt to be theoretical and problematical, reference to the tribal constitution will most likely not be very illuminating. On the other hand, you may perceive some very basic facts as to how the constitutional structure is directly responsible for not only lack of clear guidelines for the tribe, but also establishes a conflict

situation. With this in mind, I am asking that you define those tribal constitutional provisions which seem to be the most relevant to the issue at hand and discuss what bearing they may have on our analysis to date. For example, if the constitution provides powers to the tribe to incorporate business entities to manage tribal resources, point out how the tribe has utilized such constitutional powers. If the constitution authorizes the establishment of social service entities or defines how the tribal government may structure itself to accomplish this, describe how it actually works. If the constitution is silent in this regard, please make this observation as well as your considered opinion whether such a constitutional provision would be helpful. Obviously, these considerations relate back to your analysis of the tribal governing structure and whether the tribal administration might not benefit from the use of more efficient management techniques and/or definition of personnel policies.

1. Student Reports

The following are a sampling of the student reports submitted on this issue. As noted in our explanatory memorandum, the issue tends to be abstract and theoretical and thus the reports may not seem to follow a consistent format.

a. Chippewa-Cree: Rocky Boy Reservation, Montana

Prepared by: Robert E. LaFountain

List of Governing Services

Law and Order (BIA-Tribal contract for police services)

Social Services (BIA-Tribal contract, with an Indian Social Director)

Tribal Health Board (Incorporated)

Alcohol and Drug Counseling Services

Housing Authority (Incorporated - Handles housing affairs)

Governing Services (Cont'd)

Chairman functions *

Business Committee functions *

Land Resources Sub-Committee (Makes land assignments, authorizes permits, etc.) *

List of Business Activities: (See Report No. 3, Economic Development, for more detail)

Tribal Post Plant

Oil, Gas, Mineral Exploration Leases

Lease Operated Sawmill

Lease operated Hay Project (to produce hay for tribal income) purposes; to make efficient use of Tribal lands to benefit of all Tribal members) *

Cattlemen's Loan Program (BIA administered) *

Dry Forks Farms, Inc. (Tribal crop producing program and to maximize efficient use of Tribal lands to benefit of Tribe) *

Recreation Association (To produce Tribal income, and to make recreational available to Tribal people - Rodeo grounds, ceremonial grounds) *

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* Indicates dual role of the service as a governing service and as a business entity.

'Governing service' defined as a service administered for the social benefit of the Tribal members.

'Business entity, service' defined as a service administered for the economic benefits of Tribal members.

Conflicts Arising Between the Governing Services Role and Business Entity Role of Certain Services

Business entity benefits of some services/businesses may outweigh the governing service purposes of those services. In the Recreation Association program, for example, some of the Tribal Council members and some Tribal members often appear more interested in economic gain than in cultural, religious, traditional, recreational gain and development. Other Tribal members and Business Committee members are more concerned with the cultural and recreational advantages of that program. And the dual purpose of the lease operated hay project and of the Tribal-Operator contract arrangement of the Dry Forks Farms often creates conflicts also. Both of these projects produce Tribal income and therefore are beneficial as business enterprises. Both of these also require use of Tribal Cropland and as a result a conflict arises as to whether the Tribe should use Tribal lands for these purposes rather than leasing and/or assigning that land to some of the long list of potential assignees. Many members and assignees feel the lands involved in these programs could be most effectively used by assignment or lease to individuals rather than as business enterprises. (By this I mean the 'Tribal' lands, not lands already assigned.)

With each of the services listed as having a dual role the problem appears to be a problem of to what degree should the program be exercised as a social service or to what degree should it be exercised as a business. In response to this problem the Tribe considers and weighs the benefits that will transpire under each role. There seem to be very few guidelines to lead the Tribal Council to a decision so generally the Council will treat the program as the type of program that body feels will benefit the Tribe at the time the program is under consideration or questioned. (This can be done because duties, limits of many of the programs are not clearly defined. The purposes of the programs appear flexible and thus they are allowed to be considered either as community services or as business entities.)

The Business Committee often appears more interested in acting as a 'social worker' for Tribal individual problems than in acting as a 'business manager'. At other times, however, it appears to ignore or shove aside individual problems in favor of acting as a 'manager'. But generally, I believe it accurate to say that the Business Committee acts in an overall balanced manner as to both its social services and business roles. The major problem the Business

Committee seems to have in this regard is its inconsistency as to when to apply which role. But perhaps it is this inconsistency that causes the balance and application of both roles in a manner that just might happen to benefit the Tribe as a whole most of the time. Perhaps this inconsistency of roles is the best way the Business Committee could operate at present. At least this existing manner does appear to work in a way that allows Tribal economic progress (however limited it appears) and at the same time allows for creation and protection of individual and Tribal social values and interests.

Governing and Business Services as Related to Tribal Constitution:

Because most Business Committee, Chairman and program duties and responsibilities are not separately and specifically defined in the Tribal Constitution nor by an adopted plan of government action and functions, a problem of who has authority to act as to certain problems comes up continually. (Examples: in hiring of Tribal personnel, signing of documents with independent outside operators, issuing of fishing permits, etc.) As a result, many governing and business functions may never be accomplished. It appears that often different Tribal officials may think some action was the duty of some other official or the Business Committee may believe another Tribal official has the duty. Each may think the other is acting while in reality nothing is being acted on in that respect. (This also includes a problem of lack of communications between different officials and/or project managers or the Business Committee.)

Article VI of the Tribal Constitution designates the Business Committee as the body that will manage economic development:

Art. VI, Sect. (f) ... to manage all economic affairs and enterprises of the Tribe...

Art. VI, Sect. (g) ... to charter subordinate organizations for economic purposes...

Art. VI, Sect. (h) ... to appropriate available Tribal funds for Tribal governmental operations...

These provisions designate general authority and duties to the Business Committee but are not specific enough to give the Committee any good guidelines on how to carry out such powers and duties or as to how much authority to allow the Chairman and program directors or Tribal associations set up as services or businesses.

As to the Chairman, the problem may not be just a failure of the Constitution to define specifically those duties and powers. The problem may exist because the Business Committee has in the past allowed an exercise of certain powers by that position that has given rise to an implied power in that position to handle those matters although such power exercise may actually be improper. This type of situation might occur because the Chairman's duties are not clearly defined in any Tribal document and the mere fact that a Chairman is selected seems to connote that such a position would not exist if it was not meant to be a powerful position. (Many past Chairmen have exercised this view and Committee members have failed to respond to the contrary.)

Because of this type of conflict, as to who has authority to do what in certain governing services and in certain economic development aspects, many Tribal improvement projects never get off the ground unless they happen to be introduced when the Business Committee meets as a group with the Chairman and project directors present. It is then that the Committee exercises those Constitutional powers defined most effectively.

Social Service Entities and the Tribal Constitution:

No social service entities are defined or established by the Tribal Constitution and that document does not define how the Tribal government can structure itself to accomplish such services. Since social services appears to be one of the most used and most beneficial of services available to Tribal members it might be of benefit to the Tribe if a provision authorizing the Business Committee to establish social services was included in the Constitutional grants of power to that Committee. If such a provision was added the power over social services could conceivably become fully Tribal instead of BIA funded and controlled. (This is not a major problem for this tribe, however, since social services on this reservation are Tribal-BIA contracted and because the Tribal Council acts to authorize establishment of some social services anyway.)

b. Oneida: Wisconsin

Prepared by: Gerald Hill

Introduction

The following are services administered by the tribe for the benefit of the membership. I will seek to outline those services which a governing body should maintain if they are to be truly responsive to the needs of the people. These services are housing, education, police protection, fire protection, health services, and social services.

The services provided by the Oneida Tribe are administered under less than favorable conditions. For example, most of the services provided are through various federal, state, or local programs and as such often offer no security to the persons who must perform the service. In other areas, i.e., police and fire protection, and education, the tribe is dependent upon local county or city services. The Oneida community, as previously mentioned, is not geographically contiguous. Furthermore, it is politically bisected by the county line. This places some of the community in Brown County and the rest is Outagamie County which results in division of like services to the community.

The tribe has little formal communications with the county governments or townships . . .

Education

The Oneida Tribe is keenly aware of their educational needs, though not always in agreement as to direction. The elected officials have almost unanimously expressed a hopefulness that they would all eventually be replaced by college educated persons.

The tribe has taken aggressive action to upgrade education in many different areas.

There are Headstart and Upward Bound programs which are participated in actively by many tribal members. The tribe through the Education Committee works closely with the four school districts which serve the Oneida community. By the use of Home School Coordinators, there has been improved communication with the school districts and the parents of Oneida children. On the college level, the Education Committee has helped implement the Oneida Language Program by coordination with another Oneida Language

project operating in Milwaukee under the auspices of the University of Wisconsin. Information on the availability of scholarships from the BIA is dispersed through the Education Committee and referrals to the Great Lakes Inter-Tribal Education Committee. Vocational training is available through the Wisconsin Employment Security Division. An employment counselor who is also a council member works one day per week at the tribal office and processes applicants for vocational training. There is an Indian reporter who reports Oneida news in one of the local newspapers.

There is a library in the Oneida Memorial building which has 3,000 volumes. It works in cooperation with the Brown County Library but is operated and maintained by the tribe. It is available to all members of the community and has a large Indian section. Records and Indian Newspapers are available.

Culturally, there are Oneida language groups, basket makers, beading groups, carving classes, Oneida singing and dancing groups. This aspect of Oneida education is probably most energetically pursued throughout the reservation, though by no centralized group or groups. It is encouraging to see our tribe seek to revitalize the remaining culture bonds, and it is all the more impressive when one realizes that our tribe has been in contact with white society for over 400 years and the Wisconsin Oneida in particular have been predominantly Christians for 150 years.

Social Service

Social services are administered by the tribe through various federal and state programs. The Community Action Program generally oversees the other programs and is administered by the Vice-Chairman with the assistance of two community workers. The CAP also does referrals to other tribally administered programs or local county services, e.g., Legal Aid, Welfare, Employment. There are nine churches in the immediate community with varying degrees of other social services to the Oneida community.

Health services are offered through a program funded by PHS. There are regular clinic hours and a regular schedule of times when an R.N. is available. Different doctors are at the clinic on specified dates which are posted throughout the community. It has not been possible to determine to what extent the clinic is successful in

service to the community. In other words, I could not find out what percentage of the tribe makes use of the clinic. Immediate or serious health problems are referred to either the Green Bay Free Clinic or the county health services...

Legal aid is poor and totally inadequate. Through Wisconsin Indian Legal Services, one attorney, just out of school, attempts to serve about four northern Wisconsin tribes and cities or towns in which Indians live. Since he handles only individual clients and exclusively criminal cases, the effect as a legal service to the tribe is zero. I have been unable to determine the scope of operations of Judicare, which I understand is supposed to give legal counsel to the tribes upon request. In fact, I spoke with the director of Judicare who refused to discuss the scope of their services and told me to write a letter and he would answer it or, if I wanted, to come to Wausau, about 90 miles, and he would talk to me, at which point he hung up on me. My conclusion at this point is that the tribe is sorely in need of legal counsel which has been either inadequate or non-existent....

Employment assistance is available through the Wisconsin Employment Security Division. One day each week at the Tribal Building a representative from that department meets with tribal members seeking employment information or vocational training. It is extremely fortunate that the representative from WESD is also an elected council member who is extremely knowledgeable in tribal affairs and the needs of the community...

Housing and Land Assignments

...Tribal Land assignments are administered by the Land Committee. People apply to the committee who passes their recommendation to the Business Committee for final approval. The Land Committee is distinct and separate in all respects from the OHA. There is no waiting list for land assignments.

Housing on the reservation in Oneida is in short supply. The OHA has eighty odd home sites with an additional twenty-five more units being planned. The waiting lists show the existing needs in this area. Since land assignments involve only undeveloped land, only those with the means of building or developing can take advantage of an assignment.. .

Conclusion

The Oneida Tribe administers many services to tribal members. In some areas, the tribe is totally dependent, and in others is self-reliant to the extent of funding available through various federal, state or local programs.

The Oneida community is totally dependent upon the two counties which geographically divide the tribe for fire and police protection, not withstanding that there are two Oneida deputy sheriffs, one with each county. The deputy sheriff I spoke to expressed a hope that the tribe could maintain its own police force but added that such a possibility would be far in the future.

The communications with the local county and township governments is nominal. In several townships the Oneida population could elect Indian representation but this has not occurred. The biggest reason, in my opinion, is that the general Oneida community is not politicized. Even tribal politics has only minimal involvement. This observation is borne out by the fact that there has not been a quorum, seventy-five, at a semi-annual meeting in five years with the exception of a special meeting the subject of which was dispersal of a judgment claim.

The area of education is where most cooperative efforts are realized. There are four local school districts and the tribe through the Education Committee has actively participated in implementing programs on Oneida history and is currently attempting to implement the Oneida language program. The language program is also being instituted for tribal members who do not attend school.

Craft work is another area of education which the tribe promotes with displays for sale in the Memorial building.

Social services are administered by the tribe through various federal, state and local programs. These services are generally overseen by the CAP but each acts fairly independently of the others. Welfare is available at the county level and employment by state agencies. There is an unemployment rate of about 23%, which is low for a Wisconsin reservation but about four times higher than the surrounding non-Indian communities. Health services are available on a clinic basis including minimal dental services but are administered by the tribe.

Housing on the Oneida Reservation is scarce. The OHA has the responsibility for administration of about eighty-five units located in two sites. There are plans to add an additional twenty-five units. These are always full and there is a waiting list. These are low-income housing units and are maintained by the OHA.

Land assignments are administered by the Land Committee and are available to tribal members who apply to the Committee which makes its recommendations which are passed on to the Business Committee for final approval. The land which is assigned is unimproved and therefore individuals taking assignments must develop and make improvements at their own expense.

Transportation is not a great problem in Oneida because almost everyone has cars. Whether there will be problems in this area due to inflationary fuel prices cannot be determined now.

All in all, the governing services provided by the tribe are through various federal, state and local programs. The local school districts provide the closest contact with the tribal government although indirectly through the Education Committee. The local county governments and townships provide police, fire and welfare services but have little formal communications with the tribe. The state and federal programs administered by the tribe do not provide a secure basis of operation, being operated on the contingency of renewal of the particular program, i.e., funding for almost every program is on a yearly basis.

The services provided by the tribe have increased for the past ten years and so have the attendant growth problems inherent in administration of such services. The Oneida Tribe has had to meet and solve the problems of growth through trial and error but has managed to stay abreast in improving services to the community.

c. Laguna Pueblo: New Mexico

Prepared by: Ron Solimon

Delineation of Tribal Activities

There cannot be a strict delineation between the activities that the tribal council carries on as a business entity as opposed to its administration of governing services. Although the tribe is in effect a multi-million dollar operation, they have not attempted to engage in any major business enterprises wherein the tribal council would uniquely act as a business entity. The conservative attitude of the council has averted any hasty decisions that could have caused the tribe to lose any substantial sum of money in a shaky investment. As indicated in earlier reports, the council is careful to understand the complexities and impact of any decisions they make for the benefit of tribal members. However, the tribal council was recently informed of the ten year life span of its uranium mining operations. The tribe has been receiving approximately two million dollars a year in revenue from this mining operation. Thus, when the ten year period is coming to an end, the tribe must have other job providing and revenue generating business enterprises well on their way or close to completion. The tribal council is aware of the potential problems of the future and is striving to plan and implement sound economic enterprises on the reservation. Several areas have already been zoned as commercial and industrial parks with utilities already piped-in. In observing the present workload of tribal council a serious question appears -- how can the present governing structure handle the planning and implementation of such massive economic development plans? Once again, the council is aware of the need for a business manager, but no definite effort has been made to consider how a business manager and other resource people would fit into the governing structure of the Pueblo of Laguna. The main question focuses on the amount of authority and responsibility to be delegated to the business manager. A business managerial position has been recognized as essential, but the potential conflicts have also been recognized as inevitable.

Potential Conflict Amidst Change

The tribal council makes all the final decisions in every aspect of the tribal government. All the committees' decisions are subject to final review and approval of

council. Tribal budgets are traditionally approved each year by the new tribal councils after the budget committee has offered its package. The newly elected tribal treasurer acts as chairman of the budget committee. Assuming a business manager is hired on a multi-year contract, he will be the only person continually aware of the tribe's financial situation. Should he act as the committee chairman? Should he design the tribal budget without the help of a committee? Should the committee remain as is? These are some questions that need to be resolved before a business manager is actively sought and hired. If these kinds of questions are not resolved, then problems are bound to surface within a short time.

Business Manager's Role as Budget Committee Chairman

Let's explore the first question. Tribal council discussion up to now has designated the treasurer as the supervisor of the business manager. The tribal treasurer is an elected position not requiring accounting expertise or a college degree in business administration. Whereas, the business manager is required to have a minimum concentration of course hours in accounting and a master's degree in business administration is preferred. In the past the office of Treasurer has only been filled once by a person with a degree in business administration. The complexities and magnitude of the tribe's financial status and undertakings dictate the need for an educated and experienced person to handle this elected position. However, the popular vote determines the person who will fill this vital position. In light of the above facts, we can see the conflict that is likely to arise when an newly elected tribal official attempts to fill his traditional role as chairman of the budget committee and a business manager who is continually aware of the tribe's financial standing both try to run the tribe's finances in a most efficient way. Hence, we can see that a clear delineation of authority and supervision must be established before this combination is enstated.

Independent Designing of Tribal Budget

Should the business manager design the tribal budget without the help of a budget committee? If the business manager operated with an open line to the tribal council (i.e., no communication gap), he would undoubtedly be able to design the tribal budget independently. However,

the tribal council may wish to continue the existing budget committee system along with traditional tribal council approval. The existing system is very time consuming and each year deters the newly elected council's consideration of tribal business while they consider the proposed budget. Divesting the council of this process would be a major step and is likely to cause serious debate.

Business Manager's Role in the Budget Committee

Should the budget committee remain as is? If the committee remains as is, the business manager will necessarily have to be brought in as an integral part of the committee. The business manager's knowledge and the committee's background and experience have to be meshed into an effective managerial component.

Conclusion

From the above analysis and discussion it should be obvious that restructuring and new lines of authority and responsibility have to be designated prior to the effective use of a business manager. The same restructuring must take place in considering the offices of Governor and Secretary. The office of governor poses a substantially more difficult problem than the others in that his executive role will in some cases be duplicated by the business manager. A definitive working relationship must be established in these areas before the business manager can prove his worth and really help the Pueblo of Laguna.

d. Pueblo of Santa Clara: New Mexico

Prepared by: Jody N. Folwell

Administration of Tribal Governing Services

Santa Clara has one large complex which was built from EDA funds. The complex houses the tribal council room, administrative offices, three headstart classrooms and a large recreational room.

The administration of tribal governing services derives from two main offices: Community Services and Social Services. These two administrative departments are funded by HEW...

Social Services

The prime function of the Social Service Director is to arrange training sessions, coordinate the training programs with IHS (Indian Health Service), establish and finalize other positions in the administrative structure, write proposals for funds from state and federal agencies, coordinate and organize programs concerning health, education, human development, rehabilitation and welfare.

The Social Service Director administers six other branches under his administration: Community Health Representative (CHR), Mental Health Representative (MHR), Alcoholic Counselor, Consumer Education Counselor, Social Service Aide, and Community Arts and Crafts Programs. The six administrative branches are funded through sources other than HEW. MHR is funded by IHS, one alcoholic counselor is funded by OEO and employed directly by the Northern Eight CAP and the other alcoholic counselor is funded and employed by a state agency. The social service aide is under contract with the BIA. The consumer education counselor is funded by AIPC (All Indian Pueblo Council) and community arts and crafts programs are funded by various private foundations.

The primary function of the MHR is to act as a liaison between the community and the Health Service Unit (PHS) and area Mental Health Branch. The MHR's other responsibilities are: communicating with different agencies, acquiring funds, making referrals and maintaining direct contact with individuals and families.

The two alcoholic counselors have the responsibility of setting up educational classes on alcoholism, social and psychological counseling for alcoholics and counseling for the families involved.

Presently there is no acting committee for the arts and crafts programs in Santa Clara. The Arts and Crafts Committee plans and establishes juvenile and adult arts and crafts programs for the year.

Individual pottery enterprises within the pueblo are generally not under the control of the tribal council or any committee. There are no guidelines or codes regulating the individual enterprises, although there is a certain amount of regulation and control of individual potters by the different pottery committees which rise and dissipate with the problems. Generally, the tribal council will promulgate policies for the particular problems that arise which the Social Service Director or Community Service Director cannot control or solve.

The social service aide takes care of the general welfare of the community, takes applications for welfare assistance, emergency assistance, or makes referrals to the State Welfare Offices or related agencies. The Social Service Aide is the only person on the administrative staff who is contracted for.

The consumer educational counselor's responsibilities are to inform the general populace on how to avoid fraudulent sales and solve problems concerning fraudulent sales. Another future social service position which has been contracted for is the safety officer, which position should be realized and established in November of 1974.

The Social Service Director does not have direct control over IHS programs or facilities with the pueblo. The IHS in Santa Clara is not contracted for and the tribal council does not have any stringent control over the services except what minimal restrictions the tribe has placed on the health service branch. The Santa Clara clinic is in operation once a week under the direction of an intern who is selected under IHS policies. The staff consists of one doctor (intern), one nurse and one receptionist. The responsibilities of the staff are to maintain health services and upgrade the health standards of the tribal members.

Community Services

The Community Service Director's responsibilities are to oversee the programs and projects that Santa Clara has established, working directly with the community, state and federal agencies, writing proposals, and establishing and coordinating proposed programs. The administrative governing branches under the Community Service Director are: utilities, law enforcement, sanitation, housing, safety and fire prevention and recreation.

The Community Service Director plays a dual role in the supervision of his department, since he is also a council member. There seems to be no conflict or a dichotomy created between his dual roles as director and council member.

The Community Service Director has partial control over the sheriff's duties and the eight police officers employed by the tribe. The Community Service Director checks their time sheets, accepts by-weekly reports and is responsible for some of the actions of the eight officers and sheriff, although the tribal council has retained full control of the eight officers, sheriff and chief of police (who is also a council member). The relationship of the Community Service Director and the tribal council concerning the law enforcement branch seems to be a workable and viable relationship since there is no breaking point as to which department should carry the full responsibilities of the law enforcement branch. The tribal council handles all the rising issues with the law enforcement service if the Community Service Director mismanages or becomes unproficient in his duties.

The acting chief of police and the Community Service Director have the responsibility of communicating and maintaining friendly relations with the state and federal law enforcement agencies, along with maintaining a stable organizational law enforcement service.

Law enforcement codes are in the process of being written. The code will authorize the sheriff, eight police officers,(Indian police) the authority to make house arrests, search and seize unlawful items and maintain law and order within the interior and exterior boundaries of the reservation. The law enforcement code will extend to the state and municipal officers the right to enter the reservation and make arrests.

The tribal government employs four rangers for the upkeep of the forest recreation area and the collection of fees from campers, hunters, fishermen and picnickers. The maintenance funds for the recreation areas are subsidized by the BIA. The BIA funds are used for maintenance, resurfacing of roads, building of spillways, forestry and soil conservation. The remaining portion of funds for the upkeep of the recreational area is subsidized by tribal funds. The recreational branch is under the control of the Community Services, with the tribal council determining all the basic problems. All funds received from the recreational area is returned into the tribal funds. The funds are used to pay salaries, maintenance of utilities, maintenance of the recreational area and the purchasing of small items needed by the tribe.

The sanitation department's responsibilities are to maintain the sewer and water lines and maintain home utilities. Under the conditions of the proposal with PHS, the tribal council handles the minor problems and PHS takes the responsibility of solving the major problems. The Community Social Director impliedly controls the sanitation and utility department.

The Social Service Director and Community Service Director and their staffs are directly under the control of the tribal council. The tribal council finalizes all hiring and firing, promulgates personnel policies, supervises the staffs and directors, supervises the conditions placed on the two departments by the funding agencies and determines the finality of proposals and contracts.

Tribal Governing Services v. Business Entities

There is no outward conflict with the business entities and the social service governing branch since there are no stereotyped business entities per se that the tribe maintains or has established. The tribal council has complete control of the businesses that have been established.

Tribal Constitution

The constitution of Santa Clara does not authorize the establishment of social service entities, although under Article IV, section 1, sub-section V, the constitution indirectly authorizes the tribe to enact ordinances and resolutions 'for the protection of the welfare of the

pueblo and for the execution of all other powers vested in the pueblo and for the execution of all other powers vested in the pueblo by existing law'. The tribal council has in the past and in the present promulgated ordinances and resolutions for the establishment of the different social services and the development of any business entities. The revising of the constitution to authorize the establishment and the delegation of authority to these services may give the governmental structure and the different departments under the tribal government stability in administering and governing their programs.

The tribal administration and tribal government could definitely benefit from the acquisition of a manager and the use of a counselor for business purposes and acquiring the skills and techniques of managing a business enterprise. At the present the tribal administration is in the early stages of development and a need for refinement in their administration and personnel policies is not a necessity; but with all the comprehensive planning for programs and projects the need for refinement in their policies and constitution will be a necessity.

The alleviation of future problems and issues could be solved for the present and the future if positive actions are taken.

e. Cherokee Nation: Wisconsin

Prepared by: David J. Ricketts-Kingfisher

Administration of Governing Services

Since the business entity of the tribe revolves around the various vehicles used to finance them it is fairly easy to look at the structures that are services rather than economic development. Even though the tribe is structured this way, the departments report to the business manager and their relationship is much more legally defined. As with economic development, I think it is best to look at some of the programs separately to see how they perform.

Tribal Work Experience Program (TWEP)

The Tribal Work Experience Program had its beginning with the Cherokee Nation in January of 1972. TWEP is a federal program under contract to the Cherokee Tribe from the BIA. At the present time there are only four tribes within the United States which have a TWEP Program. The TWEP Program has as its objective the removal of the unemployed- employable heads of households from general assistance, which is most commonly referred to as welfare. For the month of July this year the program had a caseload of seventy-nine TWEP participants, affecting some four hundred persons in those families. The TWEP Program is administered by three staff members covering a normal load of five counties. The TWEP Program is meeting a definite need within the Cherokee Nation.

Cherokee Bilingual Education Program

The Cherokee Bilingual Education Program is designed to meet the need of children who have limited English speaking ability and come from environments where the dominant language is one other than English. It is intended that children participating in this program will develop greater competence in their dominant language and profit from increased educational opportunity. This program also provides the reverse which, it will be admitted, is less important but does allow dummies like me to learn a little of the language of our ancestors.

Cherokee Nation Arts and Crafts

This program is funded by a contract to the tribe from the BIA. The goal of the program is to provide training to Cherokee adults who want to supplement their income with arts and crafts. They are sold through the tribe and all profits are returned to the people. This would be one of those that share a dual role of providing a service and economic development.

Land Management

Another of the programs that serves in this dual capacity would be land management. This provides a service in that land is leased to Cherokees who would otherwise not be able to get it while money is raised for the tribe to buy more land.

Employment Assistance Services

Contracted to the tribe through the BIA, it provides for employment assistance in thirteen Northeast Oklahoma counties. Training available includes: nursing, beautician and secretarial training; accounting and general business; food services, and building construction technology, and provides employment assistance throughout the state and in eight cities across the nation.

CHR Program

The Cherokee Nation CHR Program has grown over a five year period, from a staff of five employees to twenty-six field workers, a Director, a Coordinator, a Secretary and two field supervisors. The goals of the CHR Program are to educate our people to a more sanitary and healthful living standard. This is done by classes given throughout the area and by individual help in the home on everything from preparing meals to the changing of bandages.

Community Adult Education Program

Funding for this brand-new department comes from HEW. The total project has three phases to provide for the educational development, skills and experiences necessary for meeting the issues facing the Cherokee people today.

Phase I of the project provides for training a selected and/or elected group of Indian leaders in the skills and techniques of community organization, group process, problem solving, needs assessment, communication and inter-group relations so as to improve the educational and employment opportunities of the community.

Phase II provides for the establishment of fifteen centers as central meeting places for use by the committees for community functions and tribal sponsored organizations and programs.

Phase III of the project is to establish education classes for adults in the community center. The success or failure of this part is in the hands of the leaders and members of each community. They are to implement, continue and evaluate their own programs and report the results.

Cherokee Nation Security Force

The Cherokee Nation Security Force is a brand-new program funded through LEAA. The force is composed of four officers who patrol the properties that the Cherokee Nation has an interest in. They are deputized by the county and in reality simply serve as deputy sheriffs that look only after tribal property.

Conclusions

Most of the administered services are well defined within the Nation. There is room, though, for considerable improvement. For example, communication between the various departments is horrible and it was only last month that for the first time they all got together. Some were even unaware of the services provided by the tribe. Secondly, there needs to be one person who is thoroughly knowledgeable with all the programs not only of the tribe but of the BIA as well. This person should be accessible to the tribal members directly so that they can solve their problems quickly and not sit in offices for hours.

2. Commentary

All Indian tribal governments do, to varying degrees, exercise municipal powers of self-government on a level comparable to municipalities under the state systems. Indeed, in certain instances, as we saw illustrated in the reports, a tribe can be more accurately compared to a state government because of the scope of self-governing powers which can be exercised by the tribes as independent political entities even though in most cases they are not actually implemented. This logically follows from the principle of federal law which holds that state governments only have as much authority over Indian reservations as the U. S. Congress specifically and expressly confers upon those state governments. If Congress does not confer this authority upon state governments, Indian tribes would exist entirely outside the scope of state governing authority as independent political units under the federal system.

Of course, Congress has acted to confer this authority upon the states, in some instances along purely geographic lines by conferring jurisdictional authority upon specific states to be exercised on designated Indian reservations. (P. L. 280 is the best example of this process. Under P. L. 280 Congress in effect told five of the states that they had complete civil and criminal jurisdiction over all reservations within their boundaries. And as to the rest of the states, they had the option of assuming this jurisdiction by amending any constitutional or enabling act to state disclaimers of jurisdiction over Indian country.) Or Congress has conferred jurisdiction upon all state governments in specific subject matter areas. For example, under the federal liquor laws Indian tribes can only authorize the sale and distribution of liquor if their own regulations are consistent with state regulations. This does not mean that Indian tribes have to secure a license from the state but simply have to see that their regulatory definitions are consistent with the state law.

Before leaving this question of the political status of Indian tribal groups as defined by the range of governing services which we see them exercising, it may be of interest to the reader to make reference to a significant report by the federal government which was recently printed and released by the National Congress of American Indians (NCAI). The report is entitled "A Study of Federal Indian Domestic Assistance Programs" (FIDAP). The study was conducted by the National Council on Indian Opportunities (NCIO) and the report was originally released in February of 1974. As explained in the introduction to the report:

> The NCIO initiated an effort to collect data on the extent of participation by federally recognized tribes in federal domestic assistance programs (Project FIDAP)

and to record the scope, level of funding, time frame, and experiences in competing for federal dollars. At the same time, NCIO wanted to identify potential programs of interest and applicability for tribes and to generate ideas for improving the federal delivery system. It was contemplated that the results of this inventory would be used to assist in assessing and measuring the impact of these programs in meeting the needs of Indian people.

The FIDAP inventory did not cover services in assistance provided by the BIA and the Indian Health Service since it was felt that this kind of data was already readily available from those agencies. Several of the items listed under their heading of "Summary Findings" are extremely significant and particularly relevant to the questions which we have just been considering.

1. There are basic misunderstandings, inaccurate information, and lack of awareness and knowledge on the political status of federally recognized Indian tribes in respect to U. S. federal government-Indian tribe treaty relationships, tribal status as units of government, and tribal status in respect to an OMB exclusion from A-95 requirements for state clearances on federal grants, all of which prejudice and constrain federally recognized tribes in competing for federal assistance program dollars.

2. While all tribes technically enjoy increasing opportunities to compete, certain tribes equipped with capable technical staff and financial resources are more successful in meeting basic requirements for programs of federal assistance . . .

4. While there are only forty-six specific instances of statutory or administrative exclusions to or constraints on Indian tribes to participate in some six hundred potentially useful federal assistance programs, in practice there are many barriers which Indian tribes must surmount to successfully compete on an equitable basis with other units of government for federal assistance dollars. . .

6. Only seventy-eight domestic assistance programs (13%) from a potential universe of six hundred are presently being utilized by federally recognized Indian tribes. Of the seventy-eight programs in which Indian tribes are participating, only thirty-nine of these programs (50%) were utilized by more than one tribe.

7. There is no organized, positive, affirmative action by the federal establishment effort to create an awareness of potential and to generate extensive utilization of available federal domestic assistance programs to improve tribal economic and social status.

8. There is no basic reference tool designed for use by Indian tribes to help them in targeting in on potentially useful federal domestic assistance programs and equip them to successfully compete for these domestic dollars.

9. At this point, most of the federal assistance delivered to tribes is general welfare in nature and improves the tribal life support base but does very little to improve the economic status and well-being of the tribe as a government unit.

We refer the reader who may be interested in obtaining a copy of the FIDAP Report from NCAI to the appendix of this report which will include a complete listing with mailing addresses, etc. Obviously, this question of the administration of governing services by Indian tribal governments is one wherein we have only scratched the surface. There is much that remains to be done in terms of providing assistance to tribes in order that they might upgrade the efficiency of their own administration and the quality of the services which are delivered.

Just as importantly, a detailed and systematic study needs to be done to document the legal basis for tribal authority in this total area. While one may speak of tribal self-determination, self-government or

sovereignty, the reality of such theoretical considerations necessarily brings us right back to the administration of governing services of tribal governments. Indian tribal governments are sovereign in theory only if they do not actually exercise these kinds of governing powers. Fortunately, we in the Indian community have reason for optimism since most tribal government leaders, as reported by our researchers, are very aware of the dimensions and critical nature of these problems. Indian tribes must be free to proceed at their own pace in taking on these kinds of responsibilities. Local leaders know best whether or not they have the resources and personnel to take these responsibilities on and whether or not their own people are prepared for their tribal government to exercise these kinds of powers. In this sense, Indian tribal people are conservative by nature and certainly they have every right to assure themselves that what might be an expanded role for their own tribal government is not assumed at the expense of their own unique culture and tradition.

Before leaving this question, we should note briefly that the suggestion made in the introductory memorandum to the students on this issue of tribal governing services that the dual role of the Indian tribal government as developer of business interests and administrator of governing services might possibly present serious conflict of interest problems was answered in the negative by those student reports addressing the issue. Apparently, a potential conflict remains but there is no evidence that this has or will become a serious problem for tribal governments.

E. Relationship of Tribal Governmental Structure to BIA

It will come as no surprise to those familiar with the history of Indian affairs that federal officials today continue to exercise a great deal of influence at the local level on tribal governments. Historically the Bureau of Indian Affairs has had an all-encompassing role on Indian reservations which dates back to the time when most of these reservations were established. The "Indian Agent" as the representative of the federal government toward a conquered people was truly colonial in the worst sense of the term. Even in recent times, the local BIA "Superintendent" exercised authority which was not that different from that which was assumed by his predecessors. As the legislative history of the 1934 Indian Reorganization Act makes abundantly clear, the lack of guidelines to determine the nature of the relationship between the federal government and the local Indian tribe and the virtually unconfined authority vested in representatives of the federal government created a situation which cried out for reform.

Of course, those evils such as were pointed out in the 1930 Merriam Report were just the things which Congress was attempting to remedy by enactment of the I.R.A. It is clear as a matter of federal law that the Indian Reorganization Act does not purport to confer a right of self-government upon local Indian tribes as these "sovereign" Indian tribes possessed an inherent right of self-government which has been recognized under federal law since the establishment of the United

States Government itself. The I.R.A., then, was merely to suggest a mechanism by which this power of self-government could be exercised, i.e., a representative form of constitutional government. In general, Indian tribes have come a long way from the days of the Indian Reorganization Act and, as we have seen up to this stage in our report, Indian tribes as a whole are moving in the direction of fuller self-government in every sense of the word.

Our purpose in asking the Indian law student researchers to focus on the present status of the relationship between the participating tribal government and the local BIA structure was an attempt to gain a concrete idea of the respective roles of the tribal government and the BIA structure. We felt that an evaluation of the institutions of Indian tribal government would not be complete without reference to the BIA structure. Naturally, the question that comes to mind is whether or not the existing BIA structure is a help or a hindrance to Indian tribes as they move in the direction of fuller self-government. As we suspected, there are no easy answers to such complicated questions, but the student reports on this issue, even though in survey fashion, can certainly be seen as a step in the right direction toward providing or coming up with the answer.

As we noted in our memorandum to the students on this issue, a recent phenomenum and significant element of the BIA tribal relationship is the process of "contracting". As noted in earlier sections of this

report, contracting is simply a process by which the Indian tribal government assumes responsibility for administering the kinds of services presently or traditionally administered by the BIA structure. No one familiar with Indian affairs seriously doubts the wisdom of the idea, but there are many legitimate questions concerning the implementation of this process. However, it was not our purpose to perform a comprehensive evaluation of "contracting" as that process is now being effected on Indian reservations and, as we note later in this report, we sincerely hope that the appropriate organizations like NCAI can direct their efforts to come up with this kind of needed evaluation.

We did, however, ask our student researchers to make some preliminary observations on how contracting was working on their respective reservations. Since contracting has only begun to be implemented by the BIA and thus is not a full scale operation on even the majority of Indian reservations, we asked the students also to examine the relationship between the Bureau and the tribal government as structured along the more traditional lines. By traditional structure we mean the BIA performing a range of governmental services on the reservation more or less independently of the tribal government. From this point of view, a relevant question would seem to be "just what is or ought to be the input of the local tribal government as the services are carried out?" For example, the federal government does not operate comparable programs at the state level without input from the state government.

The following memorandum addressed to the students on the issue of the relationship of tribal governmental structures to the BIA should give the reader a more detailed idea of the directions given to student researchers on this issue.

TO: Student Researchers - Tribal Government Assessment Program

FROM: Alan Parker

RE: Relationship of Tribal Governmental Structure to BIA

At least on the surface one could characterize the role of the BIA on the reservation as one of change. As this question was discussed at our training session in June, it was clear that the contracting of government services by the BIA to tribes must be viewed as a major development in the area of tribal sovereignty. Many questions legitimately come to mind as we attempt to focus on how the role of the BIA is affected by contracting arrangements. In addition, it is clear from your reports to date that on many reservations 'contracting' is not yet a reality and so we must be concerned with the nature of the BIA's role in the more traditional context.

A logical approach to this area would suggest a three stage inquiry:

1. What is the definition and scope of the BIA's present role?

2. How do BIA reservation-based operations and policy inter-relate with the role and function of the tribal government?

3. What future directions are seen by tribal and federal officials in the development of their respective roles?

In response to the first question I would like a listing of BIA programs administered on the reservations along with a brief description of the scope of their operations, i.e., budget, staffing, etc. Hopefully this information will be available through the agency office in the form of annual reports or other BIA data. If this is the case, please supplement copies of the same with your own commentary or observations. If such documentation is not available, rely on your own sources and briefly summarize the information available.

The second question will depend to a large degree on your ability to descriptively synthesize. It might be helpful to first take those areas of operation which have not been the subject of contracting and describe whether the tribal government is involved and to what extent, i.e., whether it is simply a matter of the council being briefed periodically by the superintendent or other officials or whether the council affects the actual decision making in this area.

With regard to those areas that are the subject of contracting arrangements, please identify and if possible send copies of the relevant contracts. Briefly describe how contracting has changed or not changed the actual operation of the programs. Also, define how the administration and management of the contracted service relate to the tribal governing structure, i.e., are there committees of the tribal council responsible for supervision of the operation or is the central tribal administration one which runs all such programs. I realize some of you have already submitted some of this information and if so please reference which of your earlier reports discussed the question. Do you feel that contracting has been truly worthwhile as an extension of the tribe's self-governing powers or simply a headache for the tribe with little substantive improvement in the role of the tribal government?

You will recall the discussion at our training session with Mr. Butler, former BIA deputy commissioner, regarding contracting problems. A recurring problem apparently is the lack of a budget allowance by the BIA for tribal administrative backup to run the contracted programs. Thus, the contracted funds do not completely meet the tribes' actual costs in administering the program. The BIA response has been that under federal contracting regulations they cannot fund an administrative backup cost for services which would duplicate that which they

already have and maintain at the area office level for non-contracting tribes. Is this a problem or obstacle to contracting on your reservation and what alternatives do you foresee? Obviously, if there are no viable alternatives, the BIA should seek a change or exception to contracting regulations to allow them to contract for the full costs of such services.

Tribal Constitutions

The major tribal constitutional problem in this area traditionally is seen as the continuing existence of virtually unlimited discretionary power held by the Secretary of the Interior to review and approve tribal council actions. (That is, in addition to his more narrowly construed trust duties.) The standard IRA tribal constitution and even non-IRA ones which follow this pattern routinely provide for a variety of tribal council actions and exercise of powers to be submitted to the Secretary for his review and approval. Without this approval, the tribal council action is null and void.

Discuss how this process works on your reservation, i.e., do you have such a constitutional provision and, if so, how is it actually implemented and what observations, conclusions or recommendations would you draw? Describe any other tribal constitutional provision relating to the BIA-tribal relationship and discuss whether they are seen as a help or hindrance. Point out where you might recommend change.

1. Student Reports

The following five student reports attempt to address the issues raised in the memorandum on the issues of BIA structures and the tribal governmental structure. I am sure that the reader will agree that the students' comments are extremely interesting and, in some cases, contain invaluable insights.

a. Pueblo of Santa Clara: New Mexico

Prepared by: Jody N. Folwell

BIA's Present Role

The BIA's present role in Santa Clara and to its members is that of a guardian, a guardian with minimum restrictions. Prior to 1954, BIA had complete control of all services: education, maintenance of utilities, soil conservation, engineering, financing, social services, judicial, prevention and enforcement services, plant management, branch of forestry, and extension services (agriculture). The tribal council has not contracted with the Bureau for any of the services listed above. The only contracts that have been made with the Bureau are land leases and social services.

The BIA has an almost tyrannical control over the educational programs and educational facilities on the reservation. The tribal council has minimal control over the educational institutions through the school board and through the supervision of proposals made by the BIA. The school board was initiated under the efforts of the council. The establishment of the school board and enforcement of the school board policies are made by the BIA. The school board serves as an advisory committee and acquires funds for the more mundane needs of the school.

The government Day School is staffed with one principal, five instructors, five teacher aides, one janitor and three maintenance men. The curriculum and the hiring and firing policies of the staff are prepared and enforced by the Bureau. The budget and proposals are not available through the BIA or tribal offices.

The BIA is presently leasing two acres of land from Santa Clara. The compound and other installations on the leased land were constructed by BIA funds and will revert to the tribe upon the expiration date of the contract. (contract is not available)

The only service contracted for with the BIA is for social services. Reference to the responsibilities and duties of the social service aide is included under the governing services. (contract for social service aide is enclosed)

The BIA services listed above are not under the direct control of the tribal council. The BIA services: soil conservation, engineering, financing, judicial, prevention and enforcement services, plant management, branch of forestry and extension services, are only indirectly controlled by the tribal council. Under these particular BIA services the tribal council is only informed of the Bureau's actions. The Bureau never requests or assents to decisional policies from the tribal council.

Future Direction of the Tribal and Federal Officials in the Development of Their Respective Roles

The tribal council of Santa Clara is at the present formulating new decisional policies regarding BIA services. Plans are being made by the council to contract with the Bureau for educational facilities and the acquisition of supervisory rights over the educational programs, proposals, curriculum, and the hiring and firing of the educational staff. All other branch services rendered by the BIA will also be coordinated by the council in the future.

Federal officials seem to be in agreement as to the new stand that Santa Clara has or is trying to maintain with the coordination of services.

Tribal Constitution

The Santa Clara Constitution under Article IV, section 1, subsection IV, gives the following authorization to the Secretary of Interior 'to advise the Secretary of the Interior with regard to all approriation estimates or federal projects for the benefit of the pueblo prior to submission of such estimates to the Bureau of the Budget and to Congress.' The tribal council in their constitution as stated have not given the Secretary of Interior the exclusive jurisdiction over their actions and exercises of power over tribal matters generally found in most IRA constitutions. The only power granted to the Secretary of Interior is the promise of advising the Secretary for estimated appropriations and for federal projects needed for the stable operation of the governmental structure.

Each fiscal year the tribal government sends their financial status and priorities to the Secretary of Interior or

his aide-de-camp. Resolutions and ordinances passed by the tribal council are not sent to the Secretary of the Interior for his approval. The tribal council at this time feels that Secretarial approval is not needed for their actions to be valid. Whether the refusal or neglect to ask for Secretarial approval is a detriment as to the validity or nullity of their actions is a matter taken very lightly by the tribal council.

BIA Services

Education
Utilities
Social Conservation
Engineering
Financing
Social Services
Judicial, Prevention and Enforcement Services
Plant Management
Branch of Forestry
Extension Services (agriculture)

b. Papago: Arizona

Prepared by: Hilda Manuel

The Papago agency of the Bureau of Indian Affairs is located in Sells, the largest village on the main reservation. There are about 100 employees working with the Bureau of Indian Affairs. One of the goals of the agency is to reduce the number of Bureau employees within the agency, as the Tribe becomes 'self-determining'.

The agency, which prides itself for being nothing more than a resource component of the Tribe, giving advice, consists of departments of administration, education, social services, employment assistance, law and order, range conservation and development, roads and real property management.

Briefly, and according to the present superintendent, Joseph Lucero, the main objective of the Bureau is self-determination for the Papago Tribe. Self-determination

to Mr. Lucero means a point where the Tribe will take over the Bureau's responsibilities and functions. Mr. Lucero compliments himself by the fact that in five and a half years of service he has been before the Papago Council fourteen times, and only when asked.

Programs administered by the Bureau are run by the Bureau employees who periodically report to the elected officials the status of the programs. Probably the most controversial program at this time involves the range development program. The Bureau submitted in fiscal year 71 a request for $ 3,601,747.00. The money requested was to be used to develop a long range and future program for severe drought conditions. Congress appropriated $2,037,000.00 and the Bureau plunged into their development plan. The plan consisted of constructing charcos which would hold rain water for the cattle. Of course, there being no rain of any substantial amount, the charcos have remained dry.

By the same token, the cattlemen disapproved of the way the charcos were being constructed. The charcos are deep with high slopes all around. This would mean that cattle in already weakened condition would not be able to climb the steep slopes. As an example, cattle were having difficulty climbing out after watering. The cattlemen had asked for charcos constructed in a slightly flat manner, so the cattle would not need to climb any slopes. The Bureau responded by saying that the type of charco built was designed to hold more water after evaporation, and was a better charco. The Bureau estimates it has spent one million dollars on 100 or more charcos of this type. At the same time, there being no rain, the forage and vegetation has been scarce. Every year the cattlemen are faced with dying cattle. Every year the Bureau blames the Tribe for allowing the cattlemen to overstock the rangeland. However, the Bureau ends up buying emergency feed with the appropriation given for the development of a range program. The cattlemen are led to believe that there is a special emergency drought fund especially for buying the feed. What they don't know is that the money is coming out of the funds appropriated for a special program. The drawback with the deception is that the Tribe is beginning to prepare a proposal for funds for a range and forage development plan and Congress will ask about the original appropriation of $2,037,000.00.

The other program which the Bureau prides itself with is the construction of roads. The budget request for road construction was $15,962.00. Congress funded $6,500,000.00. The program consists of grading and paving roads, usually

school routes. In addition, all the streets in Sells will be paved. The Bureau has spent most of the appropriation for 118 or more miles.

There is also the employment assistance program, which in essence continues the relocation program of the fifties. Most of the applicants are sent to nearby cities for training and job placement.

The social services program operates like the state welfare program. It gives assistance to people who cannot work, single women with illegitimate children, elderly people, etc. Certain aspects of the social services program have been contracted to the Tribe. For example, the Tribal Work Experience Program, TWEP. TWEP workers receive salaries comparable to their work. TWEP workers work at jobs which require temporary status. In other words, TWEP workers end up with jobs which are menial and temporary. The program for the elderly has been likewise contracted to the Tribe. This program provides recreation and encouragement for the elderly to pursue any skills they may have. The program is administered by the Executive Health Committee. The EHC is presently negotiating with the state welfare for funds to build a home for the elderly on the reservation.

The Tribe has contracted the education department of the Bureau. The contract calls for administration which involves evaluating and determining the financial needs of potential students. Applications are reviewed by the Papago Education Committee. The committee also screens the prospective student and then recommends to the education coordinator its findings. The coordinator proceeds with the recommended request by sending the application to the superintendent, who signs the request. The application is then sent to the area office for approval.

The Bureau does maintain and operate three schools on the reservation. Congress just recently appropriated $4,500,000.00 for the completion of phase II of the Santa Rosa Day Boarding School. An additional 10 million has been requested for the construction of a new school at San Simon.

The Bureau also operates a law and order department by providing salaries for ten officers, a criminal investigator, and facilities for housing the prisoners. The prison facilities are grossly inadequate and a health hazard. The Tribe provides the funds for an additional ten officers, staff and equipment. A contract is being drawn up which will turn the law and order department to the Tribe. The

Tribe will not assume responsibility unless the Bureau agrees to continue funding the operating and maintenance costs. The Bureau, on the other hand, insists that mining income in 1976 will be enough to support all Tribal programs, including the law and order department.

The administration and management of the contracted programs are under the Papago Council. That is, the particular program contracted has an appointed committee which reports to the general Papago Council. Members of these committees are usually the councilmen themselves, although other people are included. These committees supervise and are responsible for the programs to the extent allowed by the Papago Council.

The programs contracted by the Tribe have had their share of problems. Basically, the problem is one of lack of funds to support the programs. At the present time, the Bureau is pushing the Tribe to contract all the Bureau programs. The present income and revenue would not sustain the expenditures of the programs. As I talked with the superintendent I got the feeling that perhaps this was a plan by the Bureau to sabotage the Tribe's efforts at 'self-determination'. The superintendent was the first to agree that the Tribe lacked expertise, sophistication and revenue to administer the total Bureau departments, yet he was ready to turn over the responsibility to the Tribe. Obviously the only viable alternative is to negotiate with the Bureau to contract with the Tribe only when the contract will continue to support that particular program by providing the necessary operating funds.

Tribal Constitution

The tribal constitution does provide for secretarial review and approval. As I observed, the process in practice means the superintendent signs the resolution or ordinance. The only real problem involved the approval of the Tribal budget. The superintendent was quite upset with the Papago Council for not approving the proposed budget when expected. This is the budget that is covered by the trust monies. Reading through the resolutions, I found several which had not been signed by the superintendent. Whether they were null and void was not clear, since they were being enforced by the Papago Council.

The other areas giving the Secretary discretionary review power are typical of the IRA constitutions. Of greatest concern with the Papago Council and elected officials is the right to hire legal counsel. One councilman remarked

to me how he would like to hire counsel without the Secretary's approving their choice. This feeling resulted from the problems encountered with the former tribal attorney.

In actual practice there seems to be no review by the Secretary, at least with matters concerning minor problems. There is the formality of having the superintendent sign all documents coming from the Papago Council. Of course, I would recommend no secretarial review or approval power at all. The whole point of the Indian Reorganization Act was to strengthen tribal sovereign powers, not hinder them.

c. **Laguna Pueblo: New Mexico**

Prepared by: Ron Solimon

Definition and Scope of BIA's Present Role

It is difficult to define and identify the exact role of the BIA on the Pueblo of Laguna Reservation. Perhaps the BIA has more strings attached to the tribal governing structure than are evident in an eight week intensive study. The strings attached to the tribal government are not very evident in the day-to-day independent action of the tribal government. Secretarial approval of some of council's major decisions and agreements with outside entities is the most evident of any strings, and, as indicated earlier, there isn't an overt hue and cry for the deletions of 'secretarial approval clauses' from the Laguna Constitution by the tribal council. The only overt hue and cry has come from the tribe's outside resource people who are not aware of the tribal government's silent political tactics. For instance, $800,000 in back royalties has been awarded to the Pueblo of Laguna from the Anaconda Mining Company. The agreement between Anaconda and Laguna is awaiting the signature of the Secretary of the Interior, at which time the money will be in the complete control of the tribe. Council considers it a mere formality and is impatient only with the length of time that they have been waiting for approval, and recently sent a delegation to investigate the delay. The money is currently in an escrow account and has been invested in fixed income securities. Perhaps if the agreement was

denied approval, only then would there be a great protest, but for now the tribe is content to fulfill its legal role as a ward of the United States Government.

BIA's View of Laguna's Financial Status

The federal government seems to bump into the Laguna tribe's assets every time there is discussion of federal funding for various projects that the tribe would like to undertake. As an example -- when the Laguna Scholarship Program was first initiated it was a Bureau policy that Laguna should spend its own money to educate its own people. Several tribal officials recognized the legal fallacy in the BIA's position and made their complaints known and as a result changes were made. The Laguna Scholarship Program is currently administered by a very aggressive tribal member who is largely responsible for obtaining 100% funding from BIA Higher Education. The Laguna Scholarship Program also has a committee who conduct yearly contract negotiations with the Bureau and who are also largely responsible for designing the contract to suit Laguna Pueblo's education needs. Hence, BIA Higher Education is currently fulfilling its responsibility in providing money to educate the Laguna people.

Contracted Services

Laguna Pueblo has recently contracted with BIA for General Assistance Program. The staff is composed entirely of tribal members who administer the program at the local level. The tribal government does not have extensive supervisory control over this program, but a more comprehensive social services program is being considered wherein the tribe will undertake more supervisory control and be responsible for administering the program. The Laguna Scholarship Program and the General Assistance Program have to make reports to the tribal council at which time council will make recommendations and praise or admonish the staffs of these programs.

Contracted Services -- A Worthwhile Step

Thus far in the tribe's experience with contracting BIA services, they have witnessed worthwhile extensions of their self-governing powers. A major reason for the positive experience can be cited in the tribe's use of educated, qualified members to administer the programs at the local level. Since the staffs of the programs are entirely composed of tribal members, the tribal council has an added

element of control over the operations of these programs. The tribe will continue to have a valuable storehouse of educated and qualified people to operate more contracted services as time goes on.

Laguna's Relationship with the Area Office

One of Laguna's most prestigious and progressive leaders is currently head of the Tribal Operations Division at the Albuquerque Area Office. (See enclosed chart.) His job responsibilities allow him to work closely with the tribe along with the other tribes he is responsible to. He is also a member of the Laguna Planning Commission where his experience and expertise are an asset to the commission's role. Other Laguna members currently fill key positions at the Area office and Agency levels. Another tribal member has been an Area Director outside the southwestern region, and he is currently on the list of candidates to fill the now vacant Albuquerque Area Directorship. In any case, it is almost certain that an Indian will fill this post. In a sense, one could say that the Laguna Tribe has a direct line to the BIA.

Conclusion

Laguna is only beginning to explore its potential. The prevailing conservative attitude of tribal council and the tribe's contacts and resource people will continue to serve as guideposts as Laguna extends its powers of self-government. Maybe the BIA has a different blueprint.

d. Oneida: Wisconsin

Prepared by: Gerald Hill

The relationship between the BIA structure and the Oneida Tribal Government are probably similar to most other tribes. In certain areas such as Aid to Tribal Government, Comprehensive Planning, JOM and Higher Education, the tribe has assumed responsibility for administration. This will significantly result in change in the role of the tribe as a governing body because, until now, the education programs were either administered at the Area level or non-existent. It will not be possible to determine the extent to which changes will be felt because this will be the first year the tribe has contracted such services with the exception of the Aid to Tribal Government program which is in its second year but is still a new program.

In one area the relationship of the BIA with the tribe is almost totally inadequate. This is the relation of the tribe with the Solicitors Office of the BIA. I have mentioned it before but it deserves mentioning again that the Oneida Tribe is badly in need of legal counsel knowledgeable in Indian law. Such lack can be seen clearly in the problems now current with the Industrial Park.

Discussion

In the area of education, the tribe through JOM and Higher Education programs has assumed a large, new responsibility which historically has been administered at the Area BIA level. The totals of these two programs approach one million dollars and clearly define the tribe's aggressive determination of the education of Oneida children.

There are four school districts in the immediate area of the reservation which qualify for JOM funds. There has been a great deal of cooperation between the tribe through the Education Committee with these four school districts and it is expected to continue. Until 1970 there had been a record of abuses but since then cooperation has minimized them and it is expected to continue with the tribe controlling the administration of the funding.

In the opinion of the Education Coordinator it is too early to determine whether there will be any attitudinal changes in the school district's relations with the tribe. She didn't anticipate any problems but felt that respect

for the tribe by the school districts should increase proportionally to the federal dollars which flow into the school systems and are administered by the tribe, a point with which I agree.

It might be stated at this point that a change of attitude could be expected from all areas of local government, not only school districts, when there is a realization that the tribe controls significant amounts of money which could affect their economy.

To digress momentarily, in my opinion if the tribe were to boycott the non-Indian owned businesses the township's reaction would be very harsh against all Indians. I have made this point before with regard to potential political power of the Oneidas.

The current constitution contains the usual provisions for secretarial or BIA approval of ordinances passed by the Business Committee, however there have been no ordinances passed within the last five years. Tribal business is by resolution which requires only Agency approval. In fact, approval of Council decisions is a matter of course. With regard to ordinances, it seems unlikely that this would become a problem unless participation by the general membership were significantly improved. It must be remembered that there has not been a quorum, seventy-five, at the general semi-annual meetings for over five years.

There have been only two disputed decisions of the Business Committee in recent years. One involved a tribal decision to decrease a land assignment which the lessee appealed to the Agency at Ashland. In that case tribe and individual agreed to abide the Agency's decision which was in favor of the tribe. In the second case, the tribe disputed an Agency decision to the Area Office in Minneapolis which ruled in favor of the tribe. Other than these two disputes the Oneida government has a cooperative relationship with the BIA. As the tribe assumes more responsibility for administration of its programs it is conceivable that the tribe will become more assertive regarding its decisions which are appealed by individuals to the Agency, and BIA decisions disputed by the tribe which are appealed to the next higher level.

Responsibility for the development and preparation for the contracted services are delegated by the Business Council to persons knowledgeable in the particular area. For example, budgets, criteria, justification and plans of implementation of JOM programs are prepared by the Education

Coordinator. This person is very able and familiar with the Bureau mechanisms and local bureaucracies and has taken care to develop the skills of the Education Committee commensurate with their new responsibilities. This is totally necessary in view of the fact that close to one million dollars will be administered by the tribe.

In other areas the programs are prepared by persons familiar with the function of the program. However, there is not the same degree of preparation for future leadership in the particular area. In fairness, it probably is not possible to compare education with any other area since the other programs are new and their current contracted services are in amounts of less than $100,000.

Training of future leadership in most areas of tribal government is not perceivable. Although expressed by most elected officials, in actual practice there seems to be little active training for future leadership. In the past this was perhaps justified. However, if the present situation in this respect continues it will develop into a significant barrier to future growth and capability to stay abreast of increasing responsibilities. I make this opinion knowing that such training is planned yet I, personally, am unable to perceive implementation of such training. I'm also fully aware that it is much easier to see problems than offer workable solutions.

Conclusion

The relationship of the BIA and the Oneida Tribe is one of cooperation. Whether or not this will change as the tribe assumes increased responsibilities with regard to administration of funding is for future determination. However, given the aggressive attitude of the tribe it is not inconceivable that disputes could arise which could not be decided within the Bureau at any level.

The most significant programs at this early date involve educational funds, JOM and Higher Education, and this is because the totals of these contracts approach one million dollars. There are knowledgeable and qualified perons to plan and implement the various programs, however, with the exception of the Education Committee there are no perceivable plans for training or improving the skills of others to assume such planning duties. This, in my opinion, is a weak link in the potential continuity of the government.

The Agency representative has an office in the Tribal Building and has an amicable working relationship with the tribal

officials. However, the representative is responsible for three other tribes and to that extent his effectiveness is diminished. Another question this raises is what relationship with the representative would be were the cooperation less congenial or effective. The particular representative at Oneida now reports to the tribe at their request only but there are no decisions made by him which affect the tribe to the extent that veto power by the council would be of value.

The standard of Secretarial or BIA approval of ordinances is applicable by the Oneida Tribe's IRA Constitution. However, the point is moot since business is by resolution which does not require such approval, and resolution approval is routine.

The lack of a quorum at the semi-annual meetings is another obstacle since ordinances must be passed by a majority of a quorum of the General Tribal Council as required by the Constitution. Such quorum, seventy-five, has been lacking for over five years with the exception of a special meeting regarding a judgment claim. Given this attitude it's not surprising that business is by resolution. It does point to a weakness, however, in that if relations with the BIA at any level were less favorable lack of ordinances could undermine enforcement of tribal law on the reservation. This observation is further reinforced by the BIA Solicitor's Office's long delays in handing down vital decisions affecting the Oneida Community's respect for their governing body as a government.

I am unable to offer solutions at this point other than the general recommendation to the Indian Lawyers Organizations that they implement a massive program to educate Indian Tribes as governments and as individuals to their lawful rights. The Oneida Tribe is striving to grow and is successful now but sorely limited in areas of legal counsel unprovided by the BIA, notwithstanding policy statements to the contrary.

e. Chippewa-Cree: Montana

Prepared by: Robert LaFountain

Definition and Scope of the BIA's Role

The role of the BIA at Rocky Boy at present appears to be one of assistance in planning and administering programs, projects and daily functions that will benefit the tribe. The role does not appear to be one of 'director' as as been the practiced role of the BIA in the past. BIA employees seem to see their function as one of helping to carry out the programs necessary to effective tribal government. They seem to feel it is their duty to respond with assistance according to the expressed needs, goals and desires of the Tribal governing structure. There is an apparent effort by most BIA positions to limit their actions to those of an 'advisor' and not to act as 'manager'.

But remnants of the old feeling still remain that the BIA exists to 'govern and control' the actions of the tribe. This opinion is, however, not the opinion of any major portion of BIA employees at Rocky Boy. Most such employees express a hope that sometime in the not too distant future the BIA will be all-Indian staffed or that there will be no need for a BIA agency office because the tribe will be competent to handle all its own affairs.

The BIA at Rocky Boy appears to make a determined effort to solicit Tribal desires and goals with respect to the programs under BIA control. The BIA policy is that Tribal priorities, as expressed by the Business Committee, will control which direction BIA program funds and actions will go. The budget monies are placed according to those expressed priorities. The BIA sees the major priorities, as expressed by the Tribe, to be of basically two types: development of human resources, which involves developing capabilities of Tribal individuals so they can become productive for the Tribe and which includes adult vocational training; and development of natural resources, which involves maximum utilization of lands for Tribal benefit.

The Superintendent's role is viewed as a 'protective' position whose responsibility is to maintain trust responsibilities and to use his BIA subordinates to assist the Tribe in its social, political, cultural and economic endeavors (also to supervise over the BIA service functions).

List of 'BIA Controlled' Programs Administered on the Reservation (Non-Contract Programs)

Administration of BIA Programs.

Soil and Moisture Conservation (has Indian Supervisor).

Range (has both non-Indian BIA and Indian supervision; CFR regulations determine land use but the Tribe can give priority recommendations that apparently will be carried out by the BIA if such activity is feasible; BIA generally handles leasing but considers Tribal priorities.)

Forestry (has non-Indian supervision; same CFR factors and priority recommendation factors are considered as for the Range Program.)

Education (non-Indian officers; Tribal priorities not too involved here.)

Credit (Indian BIA officer administering to benefit of individuals who qualify.)

Employment Assistance (Indian officer).

Child Welfare (non-Indian officer).

Roads Construction (non-Indian officer; Business Committee sets priorities as to which roads will be built where and when.)

Road Maintenance (non-Indian officer).

Plant Management (non-Indian officer).

Under the above listed programs all supervisory employees are BIA. As is demonstrated, both Indian and non-Indian supervisors are included. The Tribe is generally involved in the planning for funding of all these programs. The percentage of the total of the BIA funds involved is determined according to the recommended priorities of the Business Committee. (This appears to be a practical method of determining funding allocations because it is the Tribe that is intended as the beneficiary of these programs. As such beneficiary the Tribe should have this say-so as to how available money should be used to benefit the Tribe to the greatest degree.)

A breakdown of BIA Program funding is attached.

List of Tribal-BIA Contracting Services

Housing Improvement Program (Indian Director).

Housing Ownership Program (Indian Director).

Law and Order (two BIA Indian police officers and three Tribal police officers; one Tribal Judge funded by BIA-Tribal contracts).

Social Services (one non-Indian BIA representative, one Tribal representative).

Summer Recreation Program (contracted with the Rocky Boy School Board; provides a recreation opportunity program for students in the summer).

Summer Work Study (provides work for students who attend college to make money available to them for college costs).

All of the above listed contracting services include Indian Supervisors. All involve funding by the BIA under programs that are administered almost completely by the Tribal government or its hired supervisors.

BIA Program Operation as Related to Tribal Government Program Operation

The Tribal government has very little to do with administration of the non-contracted programs. As stated above, those programs are principally the responsibility, financially as well as administratively, of the BIA. The Tribal Business Committee only makes recommendations as to priorities as to funding allocations in the non-contracted programs. (The recommendations that are made do carry much weight, however, since BIA's function ideally is to assist the Tribe.)

The BIA, in the operation of these programs, is guided in its decision making by the Code of Federal Regulations and by the BIA manual. The final decisions in these programs are the responsibility of the BIA. The BIA attempts to encourage a cooperative effort in this decision making process by considering Tribal recommendations, but must stay within the framework of the federal regulations and thus retains control over the programs.

There are no formal reports on the progress of these programs that are required to be submitted to the Tribe but

the info the BIA has as to program progress or status is available to the Tribe or the Tribal members. Many of the programs make individual reports that are available upon request. The individual program directors are required to make reports to the BIA and those reports are accessible by the Tribe. (The BIA at Rocky Boy appears to have a closeworking relationship with the Tribe with respect to report availability.)

The contracting programs, as already explained, are administered by the Tribe instead of by the BIA as they were prior to contracting. Becauseof this change to Tribal administrative control the operation of the programs involved has changed somewhat. The major change has been as to the responsibility of the program officials. The responsibility is now more delineated under Tribal control. The BIA no longer has control over the officers in these programs. The Tribe decides who will supervise and what methods of administration will be used. The Tribe also determines how many administrative personnel will be included. The BIA is left with very little control or responsibility. Now the BIA, in these contracting programs, has the duties of assuring that contract agreements are being met and of allocating what amount of funds go to the programs and their administration.

The changes involved, however, have not changed the program functions and effectiveness to any significant degree. The contracted programs appear to be just as effective now as they did under total BIA control. BIA technical assistance is still available. BIA funding is still available. The major advantage appears to be that the Tribe now has more to say about how those programs will operate and, therefore, Indian attitudes and Indian nature are more effectively injected into the programs.

The contracted services are administered by personnel hired or appointed by the Business Committee (in Social Services, Law and Order) or by some of the sub-committees involved (housing programs) or by personnel hired by the BIA (Law and Order) under the contract. All of the administration of these programs is ultimately controlled by the Tribe subject only to provisions of the contracts.

Contracting has both beneficial and hindering aspects for the Tribe. It allows Tribal supervision, direction, administration and better Tribal employment opportunity (to use Indian people who can be selectively chosen by the Tribe). And it often provides better services to Indians by Indians who understand Indian problems, attitudes and needs.

The primary complaints the Tribe has against contracting are that total funding available is too controlled by the BIA, that the amount of administrative funds is controlled by the BIA and that the Tribe is required to open separate bank accounts for money gained for that program. (The Tribe must open a bank account, deposit money to pay for the program initiation costs before the money is received from the government. This ties up limited Tribal money which then cannot be used until government money comes in to replace the Tribal money.)

Contracting appears to be a greater 'headache' for the BIA that it is for the Tribe. The BIA, in contracting, loses much control over supervision of the program contracted. Many of the BIA rules and federal rules no longer apply under certain contracts. The BIA usually writes up the contracts and has to supply contracting officers and contracting officer representatives. The BIA has the duty of assuring that contract terms are complied with. (This might be difficult sometimes because the contracts often appear too complicated to Tribal officials to be carried out to the letter. So, applied as they often are, the contracts might not be as effective as they are meant to be.) Some BIA employees in contracting services feel subordinate to Tribal control.

As a whole, it appears that contracting has been worthwhile for the Tribe (probably for the BIA also since it is consistent with the BIA attempt to assist rather than direct the Tribe). Costs of administration of contracting services at Rocky Boy are probably adequately covered by allocated funds and the programs appear effective. The BIA allows a maximum of about 10% of the total allocated fund of any program for administrative cost and no additional backup cost is allowed for administration. There is probably no major problem created at Rocky Boy by this policy, however. The small size and population of the reservation means the administrative functions are not so extensive in any one program that allocated funding won't cover it.

BIA-Secretary of Interior Role as Related to the Tribal Constitution

The Secretary of Interior, the Commissioner of Indian Affairs and the Superintendent are relied on for very little review or approval of Business Committee action. The Tribal Constitution as amended in 1973 contains only about four or five such provisions: Tribal land sales, leases, encumbrances require authority of the Secretary and/or the

Commissioner of Indian Affairs; the minutes of regular and special meetings are to be submitted to the Superintendent and the Commissioner; a surety bond is to be submitted by any new Secretary-Treasurer to the satisfaction of the Commissioner, and any changes or amendments to the Constitution and By-Laws must be approved by the Secretary of Interior.

The Tribal Council is able to act virtually uninterrupted by required U. S. governmental official approval. The Business Committee powers are generally listed and there is almost no mention in the Tribal Constitution of Secretarial approval. The provisions that are included that provide for Secretarial, Commissioner approval appear to hinder Tribal operations very little if any. They appear to be more beneficial as protective devices and as restrictions against illegal or improper procedure than as hindrances.

Comments and Suggestions as to Tribal-BIA Relations

The Tribe often appears to desire a continued active role of the BIA as to funding, administration of programs and services needed by the Tribe. The Tribe as a whole often gives the impression that funding, direction, technical assistance and work output by federal offices must be continued or the Tribe could not operate effectively or independently. Perhaps this is not a desire for continued dependency but rather a fear of ineffectiveness should the Tribe be subjected into a role of independence and 'total' self-government.

The feeling of many of the BIA employees, on the other hand, is a desire for the BIA to get out of the role altogether. Less dependency by the Tribe as it realizes its own potential is seen as the trend of the Rocky Boy government. The continued existence of BIA services on the reservation is seen as a 'necessary evil' at present, however.

My comment as to the two views noted above is that Rocky Boy Tribe would have little to fear about acting as an independent, self-operating government entity after further economic development of its resources and after updating and revising its laws and Constitution. It does appear that certain BIA services are a 'necessary evil' at present but that situation could be remedied by a greater effort by the Tribe to be independent (through more contracting arrangements, greater assertion of the self-government policy, more appropriations of Tribal funds for services and programs

and thus full Tribal administration and control). At present, however, it appears that the Tribe has made wise selections as to which programs should be contracted first. These selections appear to be in conformity to the Tribe's greatest needs - Law and Order, Social Services and Housing programs. The Tribe appears to have made these selections so as to correspond with Tribal abilities to respond effectively. The Tribe is not equipped technically or financially at present to assume full control over some of the existing BIA programs such as Forestry, Range, Roads Construction and Maintenance, Plant Management and Soil and Moisture Conservation.

If the Tribe should decide to become more involved in contracting of services, it would be practical to have a Tribal Attorney participate in all contract negotiations, i.e., in defining and inclusion of terms, provisions, parties, funding sources, etc. Thus protection would be provided against any possible BIA or other agency influence, coersion that could create hindrances to Tribal objectives of the contracts involved.

2. Commentary

It is interesting to note from a reading of the student reports that just as the tribes vary in terms of resources, structure of government and so on, so the BIA structure serving the tribes varies accordingly. And, just as we anticipated, the BIA contracting experiment has had mixed results as seen in the student reports - with some tribes having a very good experience with contracting arrangements, some having a bad experience, and many simply not having had the opportunity to make any valuable observations on the same. There is a definite reversal of roles in terms of the BIA-tribal relationship which is evident in the student reports. As we noted in the introductory remarks to this section, historically tribes were generally under the full control

of local BIA administrators and the local agent, in effect, ran the reservation. It now appears clear that on nearly every reservation the BIA works with and for the tribe rather than pursuing its own ends and purposes without regard to tribal input. Certainly there are exceptions to this and students report instances where the BIA seems to be ignoring tribal wishes or direction, but these instances are contrary to the general change in attitude on the part of both the tribe and the BIA and the manner in which they view their relationship at the local level.

One aspect of the BIA-tribal relationship which was alluded to in the introductory memo and referred to by some of the students was the approval and review authority exercised by representatives of the Secretary of Interior over actions of the tribal government. Basically this is an authority which is granted by tribes to representatives of the Secretary of Interior by the terms of tribal constitutions. As some of the student reports make clear, the tribal constitutions, written along the patterns of the IRA, by and large contain standard provisions which define the powers of the tribal council while at the same time make it clear that these powers are subject to the review and approval authority of the Secretary of Interior. In practice this means that if the tribal council passes an ordinance or a tribal law, before this tribal law is valid it must first be reviewed by the representative of the Secretary and approved. If such approval is not granted then, of course, the tribal law is not valid. This process allows for appeal of the local decision by either party on up through the office of the Secretary. We have speculated that this process of, in effect, having a representative of the Secretary oversee actions of tribal governments, while understandable

in the context of the development in the 1930's following the IRA, in the light of recent developments must be seen as an intrusion or limitation on the exercise of sovereign powers by tribal governments. In that sense, then, it is a device which has outlived its usefulness.

However, these are theoretical considerations which view the exercise of this power from a theoretical point of view. As some of the student reports make clear, the tribal councils do not view this review and approval authority as being a substantive check on their self-governing authority but simply as an aspect of the trustee relationship. Other tribes do not see this as a problem since in practice it has not amounted to a problem because the local representative of the Secretary does not exercise this authority in an arbitrary manner or in a way which would generate hostility of the tribal council. That is, the authority is exercised in a judicious manner and provides something of a safety valve on actions of the tribal council. In this role the local representative of the Secretary advises the tribe whether or not an ordinance or a proposed ordinance does violate a federal law or the terms of the tribe's own constitution. Consequently, tribes which operate along these lines see the review and approval authority as a means of insuring the expertise and advice of federal officials.

As with some of the other issues which the students focused upon, this question of the relationship between the tribe and the BIA structure on the reservation is one which calls for further study before valid recommendations can be made. Nevertheless, student reports and our own analysis of the question have been helpful in defining some of the issues which must be resolved in giving full consideration to the question.

F. The Indian Civil Rights Act and The Federal Government

The final issue which we asked the students to research and submit reports on was the Indian Civil Rights Act (ICRA) and the tribal government. Some explanation is called for in order that the reader might understand why we have attached such significance to this question. Up to this time we have looked at the overall structure of the tribal government, court system, efforts in economic development, inventory of governing services and relationship between the tribal government and the Bureau of Indian Affairs. However, we felt that our analysis would not be complete until we made some attempt to measure the impact of the Civil Rights Act on tribal governments.

The 1968 Indian Civil Rights Act (Public Act 90-284) ranks along with or on the same level as the Indian Reorganization Act as an example of significant legislation passed by the U. S. Congress going to the very heart of the question of how Indian tribes govern themselves. Prior to the enactment of this law there was no question that under the federal law and decisions of the U. S. Supreme Court Indian tribes were not bound by the Bill of Rights of the U. S. Constitution. This conclusion logically followed from the recognition of the fact that Indian tribal governments predated the U. S. Constitution and were not meant to be included within the scope of the Constitution by the Founding Fathers. Historically, then, Indian tribes have always been recognized as sovereign entities, free to govern themselves in any way or pattern which they might wish to. However, it also has been an unchallenged principle of federal law that

the U. S. Congress possesses sole and exclusive authority to pass laws defining the relationship between the U. S. Government and the Indian tribes.

The reader will recall that the Bill of Rights, or the first ten amendments to the U. S. Constitution, essentially defines the different ways in which the federal government is restrained from exercising its authority over U. S. citizens. Viewed from another perspective, the Bill of Rights traditionally is thought to spell out the protections which citizens have or the civil rights which they possess in relation to their own government. Since Indian tribes were not bound by these governmental restraints, a tribal citizen had to look to tribal law for these kinds of protections. While each tribal society by tradition possesses a sense of what is just or unjust in relation to the kinds of authority the government may exercise, these tribal concepts of justice have not always been consistent with the concepts of justice formulated by the dominant anglo society. At any rate, these alleged inconsistencies form the basis for congressional action resulting in the 1968 Indian Civil Rights Act. As the very extensive legislative history of this Act reveals, the Sentate Subcommittee on Constitutional Rights, which authored the legislation, was impressed with the fact that their hearings showed a lack of observance of tribal civil rights by tribal governments.

At one point the Senate subcommittee responsible for the legislation considered simply enacting a law which said in effect that Indian tribal governments would be bound by the Bill of Rights of the U. S. Constitution. This was put forward as a simple solution to the problem of

defining exactly what kinds of governmental restraints ought to be imposed on the tribes. This suggestion was expressly rejected by the subcommittee and the existing legislation which spells out ten different classes of restraint on the way in which tribal governments can exercise their powers was adopted and constitutes the main part of the present bill. Briefly, the Act begins by defining "Indian tribe", "powers of self-government" and "Indian court". Title II of the Act begins by stating: "No Indian tribe in exercising powers of self-government shall", and then the Act goes on to list ten different rights or restraints. These include such things as freedom of press, freedom from unreasonable search and seizure, freedom from double jeopardy, the right not to have to testify against oneself in a criminal case, the right to a speedy and public trial, etc. Subsection 8 or Title II contains the most general provisions which have been the subject of much litigation and have been the basis for a lot of tribal people misunderstanding the intent of the Act. Number 8 reads: "No one in tribe exercising powers of self-government shall" (Sub. 8) "deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law".

In summary one could say that the difficulty with this provision from the tribal perspective is that while the anglo system has had two centuries to define what due process and equal protection mean in the context of the anglo system of government, the Act seems to require that Indian tribes must make themselves aware of what due process and equal protection mean in the context of tribal self-government virtually overnight.

Since the 1968 Indian Civil Rights Act was passed in April of 1968 there have been better than thirty lawsuits filed in the federal courts against Indian tribal governments alleging violation of the Civil Rights Act. By far the great majority of these lawsuits involve alleged violations of due process and equal protection by tribal governments and, as we point out in the explanatory memo sent to students on this issue, generally boil down to problems involving election disputes, enrollment in membership disputes and, in general, a denial of tribal benefits such as right to land assignments. Students of federal Indian law generally agree that there are deficiencies in this legislation and commonly classify them under the following three general areas: (1) Standards of review; (2) Jurisdiction; (3) Tribal immunity.

(1) By standards of review is meant the standards by which the federal courts are meant to judge and review whether or not the particular tribal action complained of violates the Act itself. The problem generally arises in the context of the due process and equal protection violations. The Act itself does not attempt to make clear whether federal courts are to analogize rights contained in the Indian Bill of Rights to the U. S. Constitutional Bill of Rights. If one concludes that the U. S. Constitution is the model, then in the context of any given case a federal judge can turn to the case law under the U. S. Constitution.

For example, if a complaining party alleges that the tribe violates his rights of equal protection because he lives in a district on the reservation which, although it contains more population, does not have as many representatives on the tribal council as other less populated districts,

in effect such a person under the federal system could allege that he was not properly represented since when he voted for his representative to the governing body his vote did not have as much weight as the vote of someone from a more sparsely populated district. Of course, this is the classic "one man-one vote" case in which it is argued that it constitutes a violation of one's right to equal protection of the law not to have his vote weighted equally such that the representatives which he is able to elect are unequal in number.

For the federal court which adopts the theory that the Indian Bill of Rights is no more than a paraphrase of the U. S. Constitution's Bill of Rights, this case in the tribal context would not present a serious problem. Such a federal judge could automatically turn to the court decisions under the U. S. Constitution's equal protection clause and follow the standards spelled out by federal courts in similar fact situations. In effect, he would be requiring the tribal government to follow or adopt the same standards that the federal government is required to follow under the U. S. Constitution. However, and this is very important, there is material in the legislative history for this Act which would seem to imply that Congress did not intend that the Indian Bill of Rights merely be or constitute a paraphrase of the U. S. Constitution's Bill of Rights. The record indicates that the Senate Subcommittee considered and rejected that proposition in favor of a theory which would regard the Indian Bill of Rights as spelling out "sui generis" rights and restraints which apply only to tribal governments. This philosophy in enacting the law is based on the recognition that

tribal governments do have differing concepts of the way in which their governments should act and Congress intended to respect this different point of view in enacting the law while ensuring some mininal protection for tribal citizen's rights. Under this school of thought a federal judge faced with a complaint under the Indian Civil Rights Act would not automatically turn to what other federal courts have concluded in similar fact situations brought under the U. S. Constitution but would instead consider the case in the context of the tribe's culture and traditions and the tribal concepts of justice. Of course, from the Indian point of view one can see that it makes quite a bit of difference which theory or interpretation of law the federal court might follow. Those federal courts following the theory which regards the Indian Bill of Rights as a variety of the U. S. Constitution's Bill of Rights would leave little room for tribal concepts of justice if in conflict with the U. S. Constitution as interpreted by federal courts over the past hundred and ninety years. On the other hand, any federal judge adopting the "sui generis" theory would be concerned with preserving the right of the tribe to have a differing concept of what is equal protection or due process in the context of a tribal custom or tradition. The federal courts themselves are a long way from resolving this fundamental question - as is clear from an analysis of the court decisions to date under the Indian Civil Rights Act.

(2) By jurisdiction is meant the definition of the range of problems which a federal court will recognize as falling within the scope of the Indian Civil Rights Act. In this general area there are two recognizable issues now being debated. The easier to understand is the

question of exhaustion of remedies. It is a principle of federal law that in certain circumstances a federal court before granting jurisdiction to hear a particular case ought to determine whether the complaining party has exhausted other remedies available to him. Several federal courts have interposed this exhaustion of remedies requirement in the context of suits brought under the Indian Civil Rights Act. Essentially they require that a complaining witness show that he has exhausted his or her tribal remedies prior to being granted the right to have the case heard in a federal court. Tribal remedies include not only trial courts as well as courts of appeal, but also provisions which require that disputes be brought before the tribal council or other tribal body for resolution. Essentially these courts are saying that they have no jurisdiction to hear a case until the complaining party produces evidence to show that he has exhausted his tribal remedies.

The other main subpoint under the jurisdictional question concerns the question of whether or not there are certain matters which are simply beyond the jurisdiction of the law because they are political questions or, in the words of the court, "internal affairs of the tribe". These include questions like setting the age limit for eligibility to vote in tribal elections or determining the blood quantum necessary to be eligible for tribal membership or to hold tribal office. Basically this theory recognizes that these kinds of issues are essentially political issues which ought to be decided on the basis of community concensus and ought not to be a question for a federal reviewing authority.

(3) Tribal Immunity. The 1968 Indian Civil Rights Act does not

make it clear whether or not a complaining party can sue the tribe for monetary damages resulting or alleged to have resulted from a violation of the Indian Civil Rights Act. Several courts have read into the law a congressional waiver of the tribal immunity from suits for money damages in the Civil Rights Act. However, the majority of courts seem to be following the well-recognized principle of federal law that an Indian tribe is immune from suit for money damages unless Congress expressly waives this immunity. Tribal immunity from suit is based on the recognition that tribal governments as sovereign entities are in the same position as the federal sovereign - and sovereigns have the recognized right to be immune from suit. In addition, a policy consideration which is traditionally put forth is that if the government allows money damage suits to be filed against an Indian tribe it may soon reach the point where a tribe would be bankrupt as a result of such suits, or at least have to spend a sizeable part of their resources on attorney fees simply to protect themselves in court.

As one can see, some of the issues involved in an examination of tribal governments and the Indian Civil Rights Act can take on very complex questions. We were not asking the students to get into any of these complexities but rather to attempt to survey and pass on to us for purposes of this study their analyses of the question. As the enclosed memo to the students on this issue points out, we were asking the students to examine the tribal consitution to determine if perhaps there are any inherent shortcomings in relation to the Indian Civil Rights Act and also to relay back to us any examples of problems created for the tribal

government in the exercise of governing powers by requirements of the Indian Civil Rights Act. Finally, we asked the students for their own recommendations as to how the tribe ought best to proceed to deal with the Act.

TO: Student Researchers - Tribal Government Assessment Project

FROM: Alan Parker

RE: The Indian Civil Rights Act and Tribal Government

This final memo is intended to briefly explore some potential problems created for tribal governments by the 1968 Indian Civil Rights Act... I would recommend that you review the survey of caselaw on the ICRA distributed to you in the research material binders. The parameters of some of the issues such as election and membership disputes have already been defined for us by this case law and I will enclose with this memo a brief summary compiled last year for the Phoenix area director.

As always, our first frame of reference should be the tribal constitution. Most tribal constitutions drafted under the IRA or its influence are deficient according to ICRA standards of due process and equal protection in three key areas: (1) definition of eligibility requirements for enrollment and membership (2) establishing representation by district for tribal councils (3) allocation of tribal land assignments. In the case of membership requirements, our research indicates that often equal protection problems are raised either by restricting membership only to descendants of male members or by requiring a higher degree of blood quantum for off-reservation members. Of course, the one man-one vote requirement in apportionment of reservations is a familiar issue. Some constitutions create ICRA problems by requiring that land assignments of tribally held lands be contingent upon such things as possession of trust allotments or a presently existing agricultural operation. Where these requirements have been incorporated into the constitution problems are created.

Briefly indicate whether your own constitution contains the above or similar provisions raising potential equal protection or due process issues. If there has already been litigation with regard to this area, please describe the fact pattern or attach copies of the pleadings or court decision, if available. In addition to defining the scope of the problem, describe how your tribe has responded or intends to respond and whether additional assistance may be called for.

As you can see from the ICRA caselaw survey, actions of tribal courts have been the subject of very little federal court action. Primarily, the issues have been right to professional counsel in tribal court, jury trial rights and imposition of jail sentences where the defendant is unable to pay a fine. (Tate v. Short situation) Again, if you are aware of any litigation as a result of court action or the possibility of such litigation due to a practice you have observed, please describe. (If you have already done so in past reports, indicate your reference.)

The case of Johnson v. Lower Elwha Band (9th Cir., Sept. 4, 1973) illustrates very well the problem created for tribal councils by the due process requirements of the ICRA as they attempt to exercise tribal powers in what can be called a normal, every day transaction. In the course of determining whether a tribal member had lost the right to his land assignment because he had sub-assigned it and moved back to the city, the council, at least in the eyes of the court, violated plaintiff's right to due process notice and a fair hearing. Regardless of the merits of either side in the controversy, what does seem clear was that if tribal council had been able to receive the advice of counsel familiar with the ICRA and the basic requirements of due process the chances are that they never would have been sued. Or, if sued, the case would have been perfunctorily dismissed.

Without additional research, I would like you to give some thought to the kind of problem described above and compare it with all that you have observed over the course of the summer field work. Then, briefly summarize any similar situation you may be aware of indicating where the tribal council has or might have benefitted from competent and timely advice as to the requirements of the ICRA. Based on your experience, what steps do you think could be taken to alleviate the problem posed for the tribal government by the ICRA? We do not assume that tribal governments should not be required to exercise their powers in a fair and just manner, but rather conceding that tribal councils are not

composed of highly educated persons for the most part and that there might be real difficulties in understanding exactly what the Act does require in any given situation, what alternatives do you see to the tribe's being exposed to expensive and destructive litigation for ICRA violations?

1. Student Reports

a. Chippewa-Cree: Rocky Boy Reservation, Montana

Prepared by: Robert E. LaFountain

Equal Protection and Due Process as Related to Enrollment and Membership Eligibility Requirements

... The Tribal Ordinance and the Constitution are intended to prevent unfair application acceptances and rejections and at the same time to restrict enrollment to those Indians who can qualify under those four requirements listed. These documents do not restrict membership only to descendants of male members. There are provisions, in those requirements that relate to 'all members', 'all children', 'any person', and which do nor purposely exclude women members or any other designated class of persons.

The Tribal provisions do not require a higher degree of blood quantum for off-reservation members or applicants than for on-reservation members or applicants. The designated qualifying blood quantum is one-half.

The Constitution provides for 'automatic' enrollment of all members of the Rocky Boy's Band of Chippewas enrolled as of June 1934 (when the Rocky Boy's Constitution was adopted under the IRA). And it provides for automatic enrollment of children born to members who are residents at the time of the child's birth. Even non-resident members' children of one-half Indian blood are automatically enrolled. There is also a provision for Tribal election as a means of an Indian of one-half blood or more and a Montana resident, not enrolled elsewhere, to become a member.

The requirements listed would appear to protect all persons involved in membership application filing to an equal degree and would appear to allow due process in the handling of

these applications. The fact is, however, that some unfair and illegal actions related to those applications do seem to occur. There have been complaints by a small number of individuals who have filed for membership that their requests for membership in the tribe have been considered and rejected without any reason being stated by the Business Committee for such rejection. There have been complaints by some enrolled Indian women that they tried to enroll their children who were born in Havre, an off-reservation town 30 miles away, and have been refused membership for those children without a reason (although Havre has historically been considered 'on-reservation' for purposes of birth of children of Rocky Boy residents). There have been complaints about the ordinance provision that requires filing of an application to enroll a child within two years of its birth. (The ordinance provision doesn't seem to allow exception in case of mistake, inadequate representation of the child by parents who are ignorant or naive of the requirement.) There have been complaints about the Constitutional provision (Art. II, Sect. 1(d)) which states that a person shall lose membership if he is away from the reservation for 10 years and fails to reapply for membership. (The complaint here is that the Business Committee applies this provision unfairly, inconsistently, that it is not applied to some people who have 'been away' 10-25 years or that it is applied immediately to others who stay away for 10 years.)

These problems of unequal protection and due process violations do not appear to be consistently recurring incidents. There are relatively few applications for enrollment at Rocky Boy and most of the people who do apply appear to be able to get a quick and fair reply to their request. It does not appear to be a common occurence for any application to be rejected without comment as to why. It is not denied that this problem has occurred. The Enrollment Committee (Sub-Committee) and Business Committee members appear quite aware of the individual applicant's right to a statement of reason for any rejection. An effort is made to give such adequate statement in cases of rejection.

The problem of child enrollment application rejection when the child is born in Havre (because reservation facilities are not adequate) appears rare also. This problem appears to occur most often when there is a question of whether the parents, or one of them, is actually residing on the reservation. The problem here might not be one of a denial of equal protection or

due process as much as it may be a problem of the parent applicant's not understanding that their children may not be eligible unless at least one parent is a member and is also a resident of Rocky Boy.

The major problem with regard to equal protection and due process violations in enrollment situations appears to be related to the provision for the loss of membership after 10 years of non-residency. It is in this situation that strict adherence or lack of adherence to established ordinances or the Constitution has presented the greatest civil rights litigation possibilities. (The Tribe has not always given notice of termination of membership based on this Constitution provision. The Council has considered the 10 year provision adequate notice and has acted to terminate a few memberships. But additional notice has usually been given anyway.)

Civil rights litigation is most likely to occur at present, with respect to the 10 year provision, because of inaction in application of that provision rather than because of improper action of termination of membership. There are 100 plus requests for assignments by members at present. Many non-resident members hold assignments which are never improved nor used. Many of these assignment-holders haven't even been on the reservation for more than 10 years. The Business Committee is placed in a position whereby it is forced to acquire additional land for new assignments or terminate unused assignments and enrollment of the holders and members involved. At present the Committee appears to be 'putting off' any responsive action to this problem and it is on this ground that high possibility of civil rights action arises under the Indian Civil Rights Act. Additional land has become extremely difficult to obtain so the possibility of court action based on inaction of the Committee as to the enrollment situation is becoming greater all the time.

Equal Protection and Due Process as Related to Representative Selection

There is no problem at Rocky Boy as to the manner of selection of Business Committee members. All 9 members, including the Chairman, are elected at large at a general election. There are no voting districts and there are no representatives required to be chosen from any particular areas. Each vote of each qualified voter counts as one vote. The number of representatives needed receiving the highest number of votes become the

elected Committee members. The Chairman position is filed for and the person receiving the largest number of votes for that position becomes the Chairman. All members are elected to four year staggered terms.

The type of election procedures defined here are provided for in the Chippewa-Cree Constitution and in the Tribal election ordinance. The Constitution (Art. IV) spells out the candidate qualifications and filing fees. It provides for an election board which conducts elections and declares results, establishes dates of elections, and has the responsibility of assuring that elections are conducted properly.

Article V of the Constitution provides for removal of elective officials in case of felony or misdemeanor convictions while in office, provides for declaration of vacancy in case of death, resignation, or permanent leave of the official from the office duties. There is also a recall provision for the Election Board to call a new election if 40% of those who voted at the last election submit a recall petition. (A Constitution is attached hereto.)

Prior to 1970-71 the Constitution provisions herein discussed were not so clear and districts were provided for. The problem of malapportionment did come up. Unequal representation was evident. Representation was initially by a 6 district scheme. Then that was changed to 2 districts. The problem of unequal representation continued under the 2 district scheme so the Constitution was revised to provide for an at-large election procedure.

Equal Protection and Due Process as Related to Tribal Land Assignment Procedures

One of the major land assignment problems has already been considered in the enrollment discussion above: too many assignment requests, not enough assignable land, assignments held by non-residents who fail to improve or use the land, and lack of action by the Tribal Council to terminate those assignments when such termination would be justified.

Article IX of the Tribal Constitution contains provisions for land use. Under these provisions any enrolled member not having a selection (assignment) can apply for one of up to 160 acres. The Business Committee determines what, if any, land is available, then determines whether the applicant is eligible and decides accordingly whether to accept or reject the application.

Each assignee after approval is required to improve and use the land for 2 years prior to any final approval. The Business Committee retains the right to cancel a selection if an assignee allows the land to become run-down. Provision for due hearing and reassignment to another eligible member is included in this Constitutional article. There is also a provision for just compensation for any improvements by the terminated assignment and gained by the Tribe or the new assignee.

Land not used for assignment purposes is to be used for Tribal purposes. Tribal associations have first preference and individual members have next preference. (At present the policy of the Business Committee is to recognize association and individual use desires and to attempt to terminate all non-member, non-Indian leases and issue no more such leases. Then the Tribe could use that land more exclusively for Indian member benefit rather than to allow those benefits to remain minimal to the Tribe.)

Land assignment grants at Rocky Boy are not contingent on possession of trust allotments (Rocky Boy is a non-treaty, Presidential proclamation reservation). There is generally no condition that the land assigned must be used for a specific purpose. The major condition is that improvements must be made and the land used to benefit the assignee or the Tribe.

A problem that is currently facing the Business Committee is one of control or lack of control over leasing of assigned lands by assignees to non-members and/or non-Indians. Individual assignees are often influenced by non-member or non-Indian money offered for lease rights to their assignment. Some assignees have in fact leased to such people under the assumption that the property involved is theirs by assignment right, to do with as they please (except to convey title). As a result the Tribe loses much control over the use made of that assigned land. And conflicts arise between the Tribe and the assignee, between the Tribe and the non-member lessee, between the assignee and the lessee as to who has control and who has rights to the land and its use.

To alleviate this problem the Business Committee has enacted the policy of association and Tribal member preference to use and has also recently enacted a resolution clarifying this preference and notifying assignees that the Tribal associations will have right of first refusal to any assigned land the assignees desire to lease out.

A related problem in land assignment is the existence of a few assignments of over the Constitutional 160 acres. Most of these assignments appear to have been made before such an extensive problem arose of too many assignment requests and not enough land available for assignment. Now the Business Committee, which has authority to decrease the size of the assignments involved to 160 acres, is pressured on the one hand to maintain those assignments 'as a matter of right' of those assignment holders and, on the other hand, of relinquishing the assignees' holds to the maximum 160 acres. The Constitutional right of the Committee to decrease the assignments accordingly appears clear but historical, social, and political pressures make the situation much more complex than it should otherwise appear. As a result the Committee takes no action and therefore it is conceivable that civil rights litigation could arise in the near future (based on an argument of equal rights violations and failure of the Business Committee to carry out its Constitutionally defined duties related to land use).

The Tribal Court System and Equal Protection and Due Process

The Court at Rocky Boy is an active court with respect to misdemeanors by members on the Reservation but is inactive in regard to civil actions. (Assertion of jurisdiction and readiness to take actions is not one of its strong points.) There are many court actions initiated by the police system every week but very few individuals bring any kind of civil claims (civil rights or otherwise).

Very few Rocky Boy Court actions have ever reached any federal court. The decision of the Tribal Court is historically the final decision of an action. Few appeals are taken although at times it appears an appeal is warranted and reversal appears highly probable.

One of the most unfortunate situations within this Court System is the lack of law and order training or knowledge by judges and police which often results in procedure that is possibly illegal or unconstitutional. This problem seems to arise from a lack of training sessions prior to the officials' assuming these power positions, from a lack of qualification requirements that would assure highly qualified, fair minded officials, and from the non-availability of professionally trained legal

advisors who could inform the officials of proper procedure and current applicable Tribal and Federal law. (These procedure and Constitutional problems have been discussed to some degree in Report No. 2, The Rocky Boy Tribal Court System.)

The people also appear to lack knowledge of their own civil rights under the Indian Bill of Rights. Since there are no Tribal Attorneys or legally trained legal services personnel readily available, the people are never indoctrinated or informed of individual rights. As a result, when civil rights are violated by police, judges, the Business Committee, or by other Tribal members the 'victim' often does nothing in the way of affirmative legal action that would protect his rights.

The violations of rights by the Court system are not violations of the right to professional counsel in Tribal Court (although the Law and Order Code still has a provision prohibiting professional representation in Tribal Court), or violation of a jury trial right, or sentencing individuals to jail because they are unable to pay a fine (since fines appear to be imposed at rates low enough to avoid this problem or judges consider whether certain fines would be appropriate or reasonable under the circumstances). The most flagrant violations appear to be failure to inform an individual of these rights (not intentional failures) or demanding a plea prior to a reading of the rights. (It appears that these violations could be alleviated if counsel were available to inform the judges of proper procedure and individual rights!)

Violations by the police appear more common than Court violations. Sometimes the police system at Rocky Boy appears to be in a position of power application more than it appears to act as the 'servant and protector' of the people. Perhaps it is a matter of the police without guidelines attempting to protect the people and prevent crime by use of procedure the police feel is proper. Perhaps proper methods have never been pointed out to the police as a whole in training sessions. Perhaps the 1968 Civil Rights Act in conjunction with the purpose of a police system has not been explained adequately so as to prevent improper police procedure. Regardless of what has given rise to the problem as to police power application it appears evident that some evaluation and restructuring of the police system, through use of training sessions or updating or procedure sessions would be appropriate.

The police could be encouraged: to apply more humane arrest procedures (to treat reservation members with the same degree of respect the police give to non-members or whites coming on to the reservation); to bring complaints and the individuals involved before the Tribal Court and then leave prosecution up to the Court and any legal representatives involved (rather than for police to become involved in arresting and then prosecuting of individuals throughout the complete trial); to make a more deliberate effort to get Tribal law and order codes updated and explained so as to gain a better understanding of the laws the police must apply (then police would have up-to-date Indian laws to apply rather than being 'forced' to apply federal laws or state laws that seem to fit the situation); and to make a more determined effort to recognize the importance of Tribal Court jurisdiction over non-Indians and 'fugitives' on the Reservation rather than being so quick to turn non-Indian arrestees or fugitives over to State officials without a hearing in Tribal Court first.

Comments

A number of times during this eight week project I have been available to give advice, during Committee meetings and at meetings with other Tribal and Government officials, as to what the Tribe could or could not do as defined by the Indian Civil Rights Act. For instance: advice as to a land owner's right of access, egress to land surrounded by Tribal land; advice as to land assignments, zoning, and land use codes; advice as to enrollment rights; advice on proper court procedure and rights of individuals. (Tribal officials appear quite knowledgeable of the Tribal laws applicable to almost any situation. It is in the area of Civil Rights and other undefined, non-explained applicable 'federal' law that the Tribe could benefit by readily available legal counsel.) The advice and consultation requested of me convinced me of the great need for a full time, readily available Tribal attorney. The Tribe needs someone available to go to for advice before Civil Rights violation problems do arise in the future. (In fact, the Tribe could benefit from a full time attorney in many other ways - economic development suggestions, handling Tribal legal affairs generally, advice to individuals and the Tribe that would prevent suits, defend and prosecute for the Tribe on and off reservation, etc.)

Recommendations

Besides the hiring by the Tribe of a full time attorney who would do only Tribal work, I would recommend: that the law and order codes be revised, amended, and updated so as to better aid the police and court systems in application of efficient law and effective court procedures; that a reconsideration and re-evaluation of the Tribal Constitution and by-laws be made so as to determine whether any changes or additions would be appropriate for better defining or establishing Business Committee, Court or police powers and limits; that training sessions be made available on legal, court, and police procedure, on the 1968 Indian Civil Rights Act as applicable at Rocky Boy, and to explain the Tribal Constitution and Law and Order Codes to all newly elected Business Committee members, to judicial and law enforcement officials, and to other appropriate and interested individuals.

b. Oneida: Wisconsin

Prepared by: Gerald L. Hill

The ICRA has had no application whatever on the Oneida Reservation in Wisconsin. There have been relatively few disputes and these have been amicably settled within the BIA structure. One involved a land dispute in which an assignment was to be decreased. The tribe and the individual agreed to abide by any decision at the Agency level. The ruling was in favor of the tribe and was accepted by the parties, ending the dispute. Another dispute involved enrollment in which the Agency refused to recognize the enrollment of members by the Business Committee (council). This decision of the Great Lakes Agency was appealed to the Minneapolis Area Office which overruled the Agency in favor of the tribe.

Another dispute which I had cause to be aware of was one in which the tribe brought suit against a member to enforce a land ordinance regarding sub-leasing and land use by non-members. I have reported this case also in the

report on Oneida Tribal Court System. In this case, the tribe after waiting for close to a year for an opinion from the BIA Solicitor's Office decided to bring suit to enforce the ordinance. To interject at this point, primarily when land disputes arise the parties have been satisfied to accept the decision of the Agency or Area. Whether or not this will remain the case is not determinable. My recommendation to the tribe on this point is to request a study by the two Oneida law students to research the area and provide the council with informative data which they can then use to anticipate future problems of a similar nature. Returning to this case, which also reinforces the same point, the tribe brought suit in the local county court on the advice of a local attorney. The fact that it was decided at all set a precedent and thereby undermined the tribe on the advice of an attorney, apparently well-meaning, whose knowledge of Indian Law was fundamentally lacking. Whether or not this case could have been brought on the basis of the ICRA is moot now.

As it relates to the Constitution, the due process requirement has not been challenged. Article VI, Bill of Rights, was added to the Oneida Constitution by Amendment VIII on June 14, 1969, approved by the Secretary Aug. 25, 1969, to provide that protection. However, in my opinion, the legal weight of such amendment would almost certainly be less than the ICRA. Still, it reflects an awareness by the tribal government of the need for such provision in the Oneida Constitution. (See enclosure)

Since the tribe does not maintain a court system and at present does not exercise its taxing powers the ICRA has not produced problems here.

The Oneida Tribe has had no problems with the ICRA in any respect. The one case which the tribe brought was an error of tactical judgment based upon misinformation by the attorney who represented the tribe. The deficiency here is not with the tribe but rather with an attorney whose knowledge, while excellent in other respects, was absent with regard to Indian law. Disputes involving reduction of land assignments and enrollment which might have had some application of ICRA have been settled amicably at the Agency and Area level of the BIA. It is not possible to determine whether this arrangement will continue in the future but bares a need for study to anticipate problems which might arise under ICRA. I have recommended to the council that the two Oneida law students be asked to research the area to provide information

which the council could use to direct whatever lawyer would represent the tribe.

I think it is imperative that the tribe be provided guidelines along which policy may be drawn regarding the retention of legal counsel, i.e., the tribe should be able to direct an attorney to their needs. This is based upon the assumption that neither Indian lawyers nor non-Indian lawyers are or will be available in the near future.

Finally, I have recommended to the tribal council that the law students be used to provide legal research data in specific areas, e.g., tribal court systems, ICRA problems, and lawyer/client roles. Membership requirements are standard to the Oneida IRA Constitution, and disputes in this or any other area could change significantly if there would be change in the Constitution. However, such change is unlikely given the present level of tribal participation in the government.

ENCLOSURE

AMENDMENT VIII

A new article, Article VI, Bill of Rights, shall be added to the constitution.

ARTICLE VI - BILL OF RIGHTS

All members of the tribe shall be accorded equal opportunities to participate in the economic resources and activities of the tribe. All members of the tribe may enjoy, without hindrance, freedom of worship, conscience, speech, press, assembly, association and due process of law, as guaranteed by the Constitution of the United States.

c. Pueblo of Santa Clara: New Mexico

Prepared by: Jody N. Folwell

Presently the major legal problem Santa Clara is confronted with is the granting of membership to half breed children. The Santa Clara Constitution under Article 11, Section 1, Sub-Section a, b, c and d, states the conditions for membership:

> '(a) All persons of Indian blood whose names appear on the census roll of the Santa Clara pueblo as of November 1, 1935, provided that within one year from the adoption and approval of this constitution corrections may be made in the said roll by the pueblo council with the approval of the Secretary of the Interior.
>
> (b) All persons born of parents both of whom are members of the Santa Clara pueblo.
>
> (c) All children of mixed marriages between members of the Santa Clara pueblo and nonmembers, provided such children have been recognized and adopted by the council.
>
> (d) All persons naturalized as members of the pueblo.'

The family of the Martinez's and persons similarly situated brought the membership case before the Federal District Court on denial of due process under the ICRA. The Martinez's state that they were denied the right of membership due to the nonmembered status of their father. The father is a member of another tribe. Traditionally the females are not given the same rights as the male who marries outside of the tribe; heritage is patrilineal. The constitution is not clearly defined as to which sex group can acquire or be granted membership. Under subsection (c) the sex group is not identified. Thus, the original decision of membership is based on tradition.

The tribal council claims that the Federal District Court does not have jurisdiction over the case since the Martinez's have not exhausted their tribal remedies.

The tribal council could have benefited from timely advice as to the requirements of membership under ICRA. The council in my opinion would have taken great pains in

weighing the issue and the consequential monetary damages to the council if timely advice were given. The alleviation of the problems in the present case is very difficult to surmise, since the tribal council refuses to acknowledge the violation of the Martinez's rights under ICRA. The tribal council feels that as a governmental power they should have the right to decide membership.

The possibility of Santa Clara's granting membership to the Martinez's and persons similarly situated would be one solution. The granting of membership would, though, raise other issues of tribal sovereignty. The tribe under this solution would be acceding to another's wishes by threats of litigation. Conclusively the tribal council would become puppets for aggressive groups or persons.

Another solution to the membership problem would be to change the conditions of the membership requirements under the constitution. This solution would also create another action by the tribal council under intimidation.

The only alternative I see in delineating expensive and destructive litigation for tribal councils under the ICRA is to have a consent clause placed in the ICRA. The tribal governments would be given the option of accepting the ICRA as is or denying its full contents.

d. Cherokee: Oklahoma

Prepared by: Robert Steven Lowery

The two areas of specific interest here are concerned with Tribal membership and elections. Tribal membership really poses no problem since the membership is open to all descendants of enrolled members and can be established in the same way as heirship is established in the state courts.

Elections, on the other hand, do pose some problems, as already pointed out. Under the proposed constitution the application of the one man-one vote rule has obviously been broken and in talking to the solicitor's office it is quite clear that they will not let that part stand.

In general most Tribal officials agree with the Indian Civil Rights Act which is probably better suited to the Oklahoma Tribes than others because of the lack of reservations. Also considering the Act of 1906 the Tribe has always been subordinated to the state and would have probably had to follow those procedures anyway.

There has been only one case brought under the Civil Rights Act that affected the tribe. . . In the case of Groundhog v. Keeler, 442 F.2d 674 (1971), it was held that the Cherokee Tribe's method of selecting the Principal Chief did not fall under the bill and that the bill limited only tribal government and not the power of the Congress to change their status.

2. Commentary

Since this was the final issue that we were asking the students to research over the course of the summer we did not receive as many reports on this question as we would have liked. The primary reason was simply a lack of available time during which the researchers could respond to the memorandum. As our discussion with the students and tribal representatives at the evaluation session conducted at the close of the summer's work revealed, this lack of response was not indicative of a lack of interest on the part of either the students or the tribal representatives. Many of the tribal leaders, particularly those who have had the experience of responding to a lawsuit brought against the tribe under the Indian Civil Rights Act, are all too aware of the difficulties created for tribal governments by this law. However, it is not a question which can be dealt with easily nor are there any simple recommendations which could be made to the tribes which they might implement in order to deal effectively with the requirements of the act.

Despite the relative sparseness of reports from which we might draw observations, there is one common point stressed by the students. That is, it is in the area of coping with the requirements of the Civil Rights Act that tribal governments can most use professional legal advice. It is in the area of civil rights that tribal leaders cannot fall back on their experience gained through working with the tribal government. Such an experience cannot be relied upon to furnish guidelines in the more technical aspects of constitutional law, an abstract and complicated subject matter even for experienced attorneys.

For example, subsection 8 of Title II of the I.C.R.A. requires Indian tribal governments to accord the right of due process and equal protection in the exercise of self-governing powers. Traditionally, constitutional lawyers speak of "due process" as being made up of the following elements or factors: (1) adequate notice; (2) opportunity for full hearings; (3) a record of proceedings and (4) right to an appeal.

These are general requirements which fit many different kinds of situations but as constitutional law has developed they have been determined to be minimal requirements to insure "procedural" due process. A lawyer advising a tribal council would have little difficulty in insuring that these procedural requirements are respected by the tribal council in the course of an exercise of governmental action such as revocation of a tribal member's land assignment. However, without such legal advice the tribal council would be just as apt to prejudge the tribal member's rights in the matter and come to a conclusion without thinking it necessary to give him an opportunity for a full hearing following adequate notice of the hearing or insuring that a record which would point out the reason for the council's decision is made and, finally, insuring that the party has the right to some sort of appeal from the council action. It is not that the tribal council would necessarily be proceeding in an unjust manner, but they would simply be basing their actions on a common sense analysis of the tribal member's rights as opposed to a technical legal analysis. From such a non-lawyer's point of view, it it may be an easy matter to recognize that a particular tribal member has

lost his right to a land assignment as a result of a failure to maintain residency thereon and the action of the tribal council in officially revoking the assignment in order that it may be available for someone else is merely a formality for which there would seem to be no need for the procedural niceties of notice and full hearing. By way of contrast, the lawyer would be aware of the fact that although it may be a cut and dried situation, nevertheless the council as a technical, legal matter would be violating the principles of procedural due process to revoke the tribal member's right without going through the motions of granting a full hearing. In such an instance and in many other similar kinds of cases the availability of professional legal advice would be quite a significant element in enabling a tribal council to carry out its governing responsibilities without running afoul of technical requirements of the Indian Civil Rights Act.

Our student researchers were unanimous in recognizing this fact as were the tribal leaders present at our evaluation session. Here again is an area where the analogy between a tribal council and a comparable governing body of a municipality is particularly appropriate. The notion that professional legal advice is a necessity and not a luxury for municipal governing bodies even in day-to-day operations is well accepted by the non-Indian world. The city or county attorney is expected to be present at all city council deliberations to offer his advice or opinion as to the legalities of any particular proposed course of action. It was the experience of our researchers that even those tribes with the resources to afford a full-time attorney often do not use their legal

staff in the same way that a city council would. Many tribal councils are conditioned to think that although the tribal attorney may respond to requests for legal opinions generally, he is only available for litigation and not for full-time advice. Of course a great many tribes simply do not have the resources to pay for full-time legal services. This can be a self-perpetuating cycle in that if the tribe had a full-time lawyer available they might be able to generate sufficient resources to be able to afford him, but without this kind of full-time legal advice often the opportunity to generate such resources is lost.

In summary, we see that in the area of the Indian Civil Rights Act and tribal governments our initial assumption seems to have been borne out. That is, the main difficulty presented for a tribal council by the 1968 Indian Civil Rights Act is simply one of understanding on the part of tribal leaders as to exactly what the Act does require in the course of their day-to-day exercise of tribal power. The reason, at least initially, why there is such a difficulty in understanding what the act requires is that the law essentially constitutes the imposition of a "foreign" set of values and procedures onto the tribal communities. As we suggested earlier in our analysis of the "legal" shortcomings of the law, the issue can be reduced to determining what standards federal courts are to use in reviewing the actions of tribal governing bodies. If federal courts adopt an interpretation of this law which argues that tribal standards as opposed to non-Indian standards were meant to apply, one of the major problems with the act will have been cured.

In retrospect we can also see that the law has been useful, at

least in a negative sense. That is, the law has been a device forcing tribal councils to take a closer look at their procedures in order to insure that the technical elements of the law are complied with. Many tribal people will also agree, no doubt, that it is not a bad thing to require that tribal councils treat different segments of the community in an equal manner and that decisions affecting people's rights are made a part of the public record, with those adversely affected parties having the opportunity to present their side of the case. If these kinds of basic elements of fairness could be guaranteed without the deleterious side effects discussed above there would no doubt be unanimous support in the Indian community for a civil rights law.

III. SUMMARY AND RECOMMENDATIONS

A. Evaluation of This Project

As has been stated earlier in this report, this "action-research project to conduct an assessment of the institutions of tribal government" was designed to be a broad research effort which would survey the whole field of tribal government by focusing on several key issues in the area. Each researcher was assigned the task of conducting an individual analysis of his or her respective tribal government and writing a complete report on his or her analysis. As administrators of the project we had assumed the responsibility of compiling the individual reports in order that we might issue a collective report of our research findings which would be shared with all the participating tribal communities, researchers, resource personnel and organizations. Consequently, this collective report is not intended to constitute a scientific analysis of the question but rather a statement coming from our team of Indian Lawyers and law students basically to be taken for whatever it might be worth.

We felt that those tribal communities participating in this study were themselves representative of the total range of problems and situations which might be expected to be encountered on any given reservation. The tribes range from the numerically large to small communities, from those with considerable resources to those with practically none, from tribes with highly developed and sophisticated governmental systems to those with little more than a functioning tribal council. We also intentionally included several of the pueblo communities in New Mexico as well

as several of the Indian tribes from Oklahoma, tribes in P. L. 280 states and those in non-P. L. 280 states.

In the context of attempting an evaluation of the project itself, from an administrative point of view several observations can be made. As a follow-up on this summer's experience the American Indian Lawyer Training Program plans to establish a legal intern program for native American law students on a year round basis. A joint funding commitment has been received from the Bureau of Indian Affairs and the Office of Native American Programs, HEW. Present plans are to implement the project with three separate classes or groups of interns - the first group to commence participation in the project beginning in the winter-spring of 1975. Basically the classes will be divided into those students who are able to spend part of the academic year on a clinical type program during which time they will be classified as full-time students and receive either a partial or full academic credit for their efforts. The second class of students will be those who for one reason or another are not able to participate during the school year itself and thus their only available time to work on such a project would be during the summer months.

Many law schools in the county have broadened their ideas of curriculum to include clinical or field experiences which take place away from the classroom as a recognition that this type of experience can be a valuable supplement to the traditional law school course of studies. Consequently we are in the process of designing an intern project which would meet requirements imposed by the various law schools as a prerequisite to granting academic credit for such clinical work. We are convinced

that the Indian law student, if he or she intends to devote a professional career to working with Indian communities, can benefit greatly by an opportunity to spend part of the three years of law school gaining an idea of what the legal needs of Indian communities really involve. In addition, by taking advantage of the opportunity to spend the spring or fall academic semester in such a field project, a law student would have a great deal more time than the eight weeks which were available to our summer interns and thus be able to follow up on research efforts which a summer's experience would only allow time to touch upon. As administrators of both the past summer's project and the upcoming year-round intern project, we hope to be able to apply the many lessons which were learned during the summer.

1. Organization

This summer we found that a problem shared by nearly all of the law students was that they did not have a firm idea of the kinds of legal problems which were considered priority items by tribal leaders in the communities they went to prior to going to those communities. It would be a relatively simple matter to accomplish this by providing an opportunity for the students to visit the communities for one or two weeks prior to attending an orientation and training session. At the training session the interns could prepare themselves in the specific legal areas which relate to the kinds of problems they will be working on during their field experience. Actually such an approach entails an entirely different purpose for the intern project. That is, the summer's effort from the outset was an attempt to perform a survey which would give us a picture of the various tribal governing institutions, whereas the follow-up year round intern project has as its primary purpose legal training for the

intern and secondarily the furnishing of a service to the tribal communities wherein interns will be placed.

We feel that the advantage to be gained by having the interns select and concentrate their efforts on specific legal problems involving the communities they will be placed at is simply that the burden of providing substantive direction to the interns becomes much more manageable from an administrative view as the students' efforts become more specific and defined. Just as importantly, focusing on specific legal issues will allow for a natural measure of the student's accomplishment during his participation in the project. That measure will be the degree to which the student can realize some of the success in solving these kinds of legal problems. Just as the students may thus measure their individual success, so the project administrators may be able to point to project successes.

2. Direction

As a corollary to the basic change in organization for the intern project described in (1) above, we realized that a different degree of supervision and direction will need to be provided to the interns. Whereas with the summer project the students were more or less on their own, in performing a field evaluation if the student is going to be asked to work on specific legal problems for a tribal community he will need to work much more closely and perhaps even under the direct supervision of an attorney. It would be unrealistic to expect even the most talented and energetic law student to engage in legal research involving actual legal problems of the tribal community without being able to rely upon the advice and supervision of an experienced attorney.

B. Recommendations

In initiating this project we had originally hoped to be able to identify fairly specific kinds of items in the area of tribal government which would constitute recommendations for national Indian organizations, the Bureau of Indian Affairs and like federal agencies. We felt that as the law students conducted their evaluation of the governing institutions these hoped for specific items might emerge from the study as issues recognized by all of the tribes in common.

In addition, as we mentioned in the initial section of this report, a common theme to our evaluation of the tribal governing institutions was the on-going adequacy of tribal constitutions in light of the changing circumstances which the findin gs of our researchers would reveal. We hoped that by focusing on the question of constitutional deficiencies one could perhaps begin to get a picture of where the I.C.R.A. pattern and tribal constitutions need reform most.

As the study progressed we were forced to realize that our expectations that specific recommendations could be made were simply not realistic. The total situation confronting tribal governments today is much too complex and the tribes too diverse for such an approach to be valid. In a general sense, however, we can feel confident in spelling out in broad terms the need for the development of several programs which would begin to address the multifaceted and complex problems pointed out by our study.

1. Tribal Government Resource Center

The establishment of a tribal government resource center is

the primary program recommendation. As the student reports made clear, one of the real needs of Indian tribal governments is for technical assistance in properly developing and exercising tribal governing powers. Notably absent from the array of services provided by federal agencies and private groups is program effort which would attempt to advise and assist tribes in just this very manner. Such a service should encompass not only technical assistance directly to individual tribes but the systematic organization and compilation of research data in the area. Our suggestion is that such a research and resource unit be created to specialize in such a function. The unit could begin systematically collecting information on how tribes have best exercised powers in a given number for fields such as taxation, zoning, regulation of business enterprises, protection of natural resources, and so on. A packet of materials could be developed in each separate field which would then be made available to tribes requesting assistance and perhaps even model sets of tribal ordinances could be written up which, if furnished to tribes, could be available for modification to meet their own individual needs.

2. Development of Evaluation Standards

A related problem for tribal governments is the lack of standards by which they could measure whether or not the various agencies providing services to them were functioning in the most effective manner. The same observation is true of the tribes' own governing institutions. It is interesting to note that comparable kinds of qualitative mechanisms and services are available to municipal governments or local governments under the state systems. This would seem to imply that it would be a useful lead for tribes to investigate the same and to see what might be learned therein.

C. Conclusions of N.C.A.I. Workshop on Tribal Government - 31st Annual Convention, San Diego, California (October 24-27, 1974)

This writer participated in the recent N.C.A.I. convention as workshop panel moderator on tribal government. In that capacity I was asked to assemble a panel of persons who would be able to examine the question of the tribal government from the different relevant perspectives and come up with recommendations or resolutions which N.C.A.I. could then adopt as programs for the coming year. Materials developed as an agenda for this workshop which also identifies panel members and their backgrounds are attached to this report as appendices. The various specific recommendations coming out of this panel are discussed below. As would be expected, these recommendations and the rationale for them strongly reinforce the research findings of this research project.

1. Analysis of Contracting

Members of the workshop panel and those participants of the convention attending the workshop felt very strongly that the question of contracting should be exhaustively analyzed by a non-federal organization and reports on this analysis made available to the various tribes. It was felt that contracting could be a very valuable mechanism for many tribes, not only to increase the level of self-government but also to provide an administrative base for the tribal functions. However, it must also be recognized that contracting as explained and proposed by federal officials of the BIA was done so from their perspective and history has shown that the BIA's point of view has not always been consistent with or even in the best interest of the tribes. In any event, it simply seemed like a worthwhile and wise endeavor to suggest that N.C.A.I.

assume the responsibility of conducting an evaluation of contracting so that those tribes who have not yet entered into these kinds of contracts would know of the range of options available to them and that all tribes have available to them an evaluation of how contracting has worked in a representative number of tribal situations. It was also recommended that N.C.A.I. approach the Bureau of Indian Affairs for a contract to perform this evaluation of the contracting process.

2. Monitoring BIA Support for Tribal Court Systems

The workshop also recognized the critical nature of the role which tribal courts have been asked to play in the development of tribal self-determination. Many tribal leaders are aware of the fact that the tribal court has long been a neglected institution, both under BIA control and under tribal control, with the result that in many cases tribal courts were simply not up to the scope of the demands being placed upon them at present. That is, for those tribes taking a much broader review of tribal government and what their own tribal government would be doing, it is only logical to point out that the tribal government without an effective court system to implement and carry out tribal law is really weakened. To its credit, the BIA has recognized the fact that tribal courts do need a greater level of support than they have received in the past and the Bureau has consequently been directing more attention to this area. It was reported by participants at the workshop that the BIA had taken upon itself the role of maintaining a training program for Indian tribal court judges which was to be initiated in the near future. It was therefore a recommendation of the tribal government workshop that N.C.A.I. monitor this training

program as conducted by the BIA to insure that those tribal judges participating receive the degree of training which is commensurate with the demands being placed on their court systems. As part of this recommendation the workshop also recognized the fact that the relationship between tribal courts and local units of state government court systems was an area which would require much attention. In the past the relationship between tribal and state courts has been practically non-existent with the result that oftentimes tribal courts ignored requests for enforcement of the state court judgments and vice versa. It does not require any deep analysis to realize that this situation if pursued would not be beneficial to the tribe or the state. Consequently it was recommended that NCAI explore ways of studying and publicizing experiments and interrelationships between tribal and state courts which various participants in the workshop were familiar with. A listing of such experiences was made for the benefit of NCAI officials.

3. Training for Tribal Leaders on Jurisdictional Relationships Between Tribal Governments and Local Units of State Government

Workshop panelists recognized that a serious and persistent problem for local tribal leaders was the lack of understanding by both tribal people and local state governmental personnel of the proper relationship between Indian tribal governments and those neighboring units of the state government. For any one at all familiar with local non-Indian sentiment in the communities neighboring reservations, it would not come as a surprise to hear the great lack of understanding as to the actual legal status of Indian tribal governments. All too often local people do

not understand that the tribe has a right to operate as a semi-sovereign self-governing unit and that the implications of the tribe's operating in such a manner are that neighboring units of the state government must necessarily recognize tribes as such. Instead, the notion persists among members of the non-Indian communities that Indian tribes are simply wards of the federal government without any real powers or responsibilities of self-government. It was recommended to NCAI that they investigate ways of setting up training or workshop sessions on the local level for tribal leaders and also possibly for leaders of the non-Indian communities in order that they might explore in concrete terms just what tribal self-government means. Such an education process would, of course, benefit the local tribal people but should also have the effect of dispelling any false notions presently held by non-Indian communities and which now form the basis of potential controversy, i.e., political backlash. (See also: South Dakota Report on Intragovernmental Relationships - listed in Bibliography)

4. Creation of Training Models for Development of Tribal "Management Capabilities"

The panel recognized the serious problem posed for many tribal governments by their lack of management capabilities. These problems simply do not have to exist since the acquiring of experience and ability in the management and administration area is basically a matter of locating and training personnel. However, many tribes are handicapped by the fact that they do not have the experience to know where to start or how to go about concentrating on this problem. Workshop panelists and participants felt that it would be a good way to begin to meet this problem by

developing training materials and model management plans which could be distributed to tribal governments which might form the basis for their discussion at the local level as to what was possible and desirable in the development of their own management capabilities.

5. Support for Tribal Governments Located in P. L. 280 States

Panelists at the workshop recognized that those tribal governments located in P. L. 280 states faced special problems insofar as their achieving recognition of self-governing rights. That is most tribes were all too often burdened with the proposition that Public Law 280 had effectively withdrawn from them many areas of jurisdiction with the result that those tribes could not truly function as self-governing units. Leaders of P. L. 280 tribes were requesting assistance from NCAI in primarily two areas, that is, strategies for retrocession from the effects of P. L. 280 and strategies in developing a favorable interpretation of the law. P. L. 280 had been amended in 1968 to allow those states which had assumed it to retrocede or in effect give jurisdiction back to the tribal governments in the areas they had assumed it from under the original version of the law. However, many tribal leaders recognized that this was a very political question on the state level and they were asking NCAI to help them devise strategies of attacking the question from the politicalppoint of view. That is, how they might begin to lobby at the state and national levels for retrocession.

In the other area of the interpretation of the scope of P. L. 280, panelists at the workshop pointed out that under one theory of the law P. L. 280 did not withdraw many areas of jurisdiction or governmental

authority from tribal governments but simply conferred the power on the states to act in those areas, with the result that there was concurrent jurisdiction - or jurisdiction was shared by both the state and the tribe with respect to the specified areas. However, this theory is not commonly accepted by state courts nor has it been fully litigated in the federal courts. As to this issue, the P. L. 280 tribes were requested that N.C.A.I. help them by devising in effect litigation or judicial strategies for insuring that the most favorable interpretation of this law is eventually arrived at in the court systems.

APPENDIX A

PROFILES ON INDIAN LAW STUDENT RESEARCHERS

Urban Bear Don't Walk
Tribal Affiliation: Crow Indian Tribe, Montana
Married, three children
Attending University of Montana School of Law, Missoula, Montana
Anticipated Date of Graduation: June 1975
Undergraduate: Montana State University, Bozeman, Montana; Accounting

Harry J. Buckanaga
Tribal Affiliation: Sisseton-Wahpeton Sioux, Sisseton, South Dakota
Age: 25
Attended University of Minnesota School of Law, Minneapolis, Minnesota
Undergraduate: Dartmouth College, Hanover, New Hampshire

Jody Folwell
Tribal Affiliation: Santa Clara (Tewa), Santa Clara Pueblo, New Mexico
Age: 31; Married, two children
Attended Dickinson School of Law, Carlisle, Pennsylvania
Undergraduate: University of New Mexico and College of Santa Fe;
Elementary and Secondary Education

Carole Ann Hart
Tribal Affiliation: Rosebud Sioux, Rosebud, South Dakota
Attending University of South Dakota School of Law, Vermillion, S. Dakota

Gerald J. Hill
Tribal Affiliation: Oneida Indian Tribe, Oneida, Wisconsin
Age: 37; Married
Attending University of California School of Law, Davis, California
Anticipated Date of Graduation: June 1976
Undergraduate: California State University, Northridge, California;
Linguistics

James Hofbauer
Tribal Affiliation: L'Anse Chippewa, Keweenaw Bay, Michigan
Age: 25; Married, one child
Attended University of Michigan School of Law, Ann Arbor, Michigan
Undergraduate: Northland College, Ashland, Wisconsin

Robert E. LaFountain
Tribal Affiliation: Chippewa, Turtle Mountain Reservation, Belcourt, N. D.
Age: 28; Married, one child
Attending Loyola University School of Law, Los Angeles, California
Anticipated Date of Graduation: June 1975
Undergraduate: Montana State University, Bozeman, Montana; Government

Robert Steven Lowery
Tribal Affiliation: Cherokee, Tahlequah, Oklahoma
Age: 24; Married, no children
Attending University of Tulsa School of Law, Tulsa, Oklahoma
Anticipated Date of Graduation: June 1976
Undergraduate: California State College, Dominguez Hills, California; Political Science

Arthur Maillet
Tribal Affiliation: Paiute/Shoshone, Walker River, Nevada
Attending Golden Gate University School of Law, San Francisco, California
Anticipated Date of Graduation: June 1976
Age: 28; Single
Undergraduate: Pasadena College, Pasadena, California; History, B.A.
Pennsylvania State University, M. Ed.

Hilda Ann Manuel
Tribal Affiliation: Papago, Sells, Arizona
Age: 24; Single
Attending University of New Mexico School of Law, Albuquerque, New Mexico
Anticipated Date of Graduation: June 1976

Patricia Quirk
Tribal Affiliation: Quechan Indian Tribe, Ft. Yuma, California
Age: 38; Widow, three children
Attended University of California School of Law, Davis, California
Undergraduate: Chico State College, Chico, California

David Ricketts-Kingfisher
Tribal Affiliation: Cherokee, Tahlequah, Oklahoma
Attending University of California School of Law, Berkeley, California

Jimmy Shorty
Tribal Affiliation: Navajo Indian Tribe, Window Rock, Arizona
Attending University of New Mexico School of Law, Albuquerque, New Mexico
Anticipated Date of Graduation: June 1975
Undergraduate: St. Joseph's College, Rensselaer, Indiana; Geology

Ron Solimon
Tribal Affiliation: Laguna Pueblo, Laguna, New Mexico
Age: 23; Married
Attending University of New Mexico School of Law
Anticipated Date of Graduation: June 1976

June Webb
Tribal Affiliation: Nez Perce Tribe, Lapwai, Idaho
Age: 24; Single
Attended University of California, Hastings School of Law, San Francisco, California
Undergraduate: University of California, Berkeley, California; Sociology

Department of the Interior
Bureau of Indian Affairs

Statistics
Dec. 24, 1974

APPENDIX B

INDIAN RESIDENT POPULATION AND LAND DATA

Location	Indian Resident Population (1973) *	Original Area of Reservation (1934)	Acres in Trust Land Report (1973) **
Belcourt, North Dakota Turtle Mountain Reservation	7,385	458,700	68,907
Cheyenne-Arapaho Tribe Concho, Oklahoma	4,200	4,294,460	91,202
Flathead Reservation Salish & Kootenai Tribes	2,955	1,248,000	612,845
L'Anse Band Keeweenaw Bay, Michigan	404	-	10,109
Nez Perce Reservation & Tribe Idaho	1,505	760,133	87,475
Quechan Tribe Fort Yuma Reservation, Calif.	856	25,622	9,246
Rosebud Reservation South Dakota	7,538	3,228,161	933,536
Sisseton Reservation South & North Dakota	2,434	918,780	106,009

* These figures indicate total Indian resident population without distinguishing between tribal members and non-members.

** These figures indicate acres in trust, not actual acreage within reservation boundaries.

The following figures were submitted by student researchers:

Location	Indian Resident Population	Tribal Member-ship	Acres in Trust
Chippewa-Cree Rocky Boy Reservation	1,600	2,200	107,613
Paiute-Shoshone Lone Pine Band Owens Valley, California	150		237
Papago Tribe Arizona	9,000		3,000,000
Pueblo of Laguna New Mexico	5,200	4,800	425,000
Oneida Tribe Wisconsin	2,700	7,000	65,000
Pueblo of Santa Clara New Mexico	1,204		42,737

APPENDIX C

ALBUQUERQUE TRAINING SESSION: OUTLINE OF DISCUSSION ON TRIBAL CONSTITUTIONS, TRIBAL POWERS OF SELF-GOVERNMENT AND THE INDIAN BILL OF RIGHTS

I. Legal Foundations of Tribal Governments-Constitutional and non-Constitutional Tribes

A. The Indian Reorganization Act - History and Purposes

1. §16 - general structure and development of tribal constitutions under IRA

2. §17 - corporate charters

B. Non-IRA Constitutions

1. Pursuant to specific federal acts (e.g., Oklahoma Indian Welfare Act, Alaska Native Act)

2. Independent of specific federal statutes

C. Non-Constitutional Tribes (i.e., 16 Pueblos of New Mexico)

D. General Role of the Secretary of Interior

1. Preparation of tribal constitutional provisions

2. Supervision of constitutional elections

3. Review and/or approval of constitutional provisions, tribal legislation, and official tribal action

4. Opinions of the Solicitor

II. The Source and Scope of Tribal Governmental Powers

A. General Sources of Tribal Power

1. Doctrine of inherent self-governing powers.

2. General Federal Statutes (e.g., 25 U.S.C. §43- transfer of B.I.A. functions to tribes; H.R. 10294, "The Land Use Planning Act of 1973").

3. Specific Federal statutes (i.e., federal laws conveying various rights and powers to specific tribes, e.g., tribal land consolidation acts)

4. The IRA and tribal constitutions - the confirmation of inherent and statutory powers

B. General Limitations on the Scope or Exercise of Tribal Powers

1. General Federal Statutes (e.g., the Non-Intercourse Act, 25 U.S.C. §177; the Trader Acts, 25 U.S.C. §§261-264; Leasing Regulation Acts, 25 U.S.C. §§391 et seq.; General Crimes Act, 18 U.S.C. §§ 1152; Major Crimes Act, 18 U.S.C. §1153; Liquor Laws, 18 U.S.C. §§1154-1156, 1161; P.L.-280, 18 U.S.C. §1162, 28 U.S.C. §1360).

2. Specific Federal Statutes (i.e., Congressional restrictions imposed on particular tribes, e.g., §§26 and 28 of the "Curtis" Act of June 28, 1898, 30 Stat. 495, respectively rendering the laws of the Five Civilized Tribes unenforceable in federal courts and abolishing the tribal courts of those tribes).

3. Indian Bill of Rights, 25 U.S.C. §1302, and the application of modified federal constitutional standards to official tribal action affecting members and non-members of the tribe.

4. Tribal Constitutional Limitations (e.g.; (a) the failure of tribal constitutions to spell out inherent powers vested in the tribal council; (b) the cumbersome procedures for constitutional amendment; (c) the approval power of the Secretary of Interior over constitutional amendments under 25 U.S.C. §476 as to IRA tribes and 25 U.S.C. §2 as to non-IRA tribes; (d) the review or approval power over tribal ordinances delegated by IRA and non-IRA Constitutions to the Secretary; and (e) the incompatability between the quasi-anglo constitutional structures or procedures of tribal government on one hand, and the needs and resources of the tribe on the other hand.

5. Judicial doctrines on the permissible scope of state action within Indian country, especially in relation to state power over non-Indians and non-Indian owned land on reservations.

III. The Extent and Exercise of Specific Tribal Governmental Powers

A. The Power to Form or Dissolve a Government

1. The silence of IRA as to formation of governmental structures

2. The general form of governments that have been established - tribal councils and tribal courts, as well as the division of power between councils and courts

3. Tribal elections and the Indian Bill of Rights, specifically: (a) application of the one-man, one-vote doctrine to tribal electoral districting schemes; (b) age and residency requirements for purposes of voting and holding office; (3) resolution of election disputes - tribal remedies and federal judicial power under 25 U.S.C. §1302; (d) removal of council members and "due process" procedural and substantive requirements under 25 U.S.C. §1302(8); and (e) the role of the Secretary in the conduct of tribal elections and the recognition of tribal governing bodies.

4. Dissolution of tribal governments and/or rewriting tribal constitutions

B. The Power to Govern Membership in the Tribe

1. The balance of power between tribal control over membership for "internal" purposes and the Secretarial power vis-a-vis federal trust responsibilities. See Op. Asst. Secretary Loesch, 77 I.D. 116 (1970) (Scope of Secretarial review authority over tribal membership actions)

2. Tribal membership standards and the Indian Bill of Rights - the Colville and Santa Clara cases; Op. Deputy Sol, 76 I.D. 353 (1969) (voiding as discriminatory Jicarilla Constitutional Amendment distinguishing between legitimate and illegitimate children for purposes of membership eligibility).

3. Tribal procedures for resolution of membership disputes and the role of federal courts under 25 U.S.C. §1302.

C. The Power to Tax

1. Taxation of members - see Op. Sol, Feb. 17, 1939.

2. Taxation of non-members - see Buster v. Wright, 135 Fed. 947 (8th Cir. 1005), app. dis. 203 U.S. 599 (1906) (taxation of non-federally licensed trader in Indian country); Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89 (8th Cir. 1956) (taxation of non-Indian leases of Indian allotted lands); Op. Sol., Oct. 23, 1957 (taxation of federally licensed traders); Op. Sol, M-36448, Mar. 3, 1958 (tribal sales tax).

3. State taxation powers - the impact of McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973), Mescalero Apache Tribe v. Jones, 411 U.S. 164 (1973), and Tonasket v. State of Washington, 70 Wash. 2d 607, 488 P.2d 281 (1972), vacated and remanded, _____ U.S. _____, 93 S. Ct. 1941 (1973), upon tribal tax powers and tribal economic development.

4. Tribal constitutional limitations - (a) scope of the tribal council's power "to levy tax or license fees" on "non-members doing business within the reservation," subject to Secretarial review, as limited to commercial taxes, see Op. Sol., Feb. 17, 1939; and (b) constitutional requirements of tribal referendum prior to imposition of taxes or privilege fees upon tribal members, see U.S. v. Pollman, 364 F. Supp. 995 (D. Mont. 1973).

5. Indian Bill of Rights and permissible discrimination in taxing members and non-members, see U.S. v. Follman, supra, imposition of fishing fees on non-members without similar charges upon members, does not violate equal protection clause of 25 U.S.C. §1302(8); Memo. Sol. M-36821 (Mar. 19, 1971) imposition of different fishing fee amounts upon non-Indians, i.e., preferential treatment for some classes of non-Indians, might violate §1302(8).

D. The Power to Regulate the Use and Disposition of Tribal Property

1. Assignment of tribal lands for the use of tribal members - governing tribal constitutional provisions and the impact of the Indian Bill of Rights. See Johnson v. Lower Elwha Tribal Community, 434 F.2d 288 (9th Cir. 1973) (procedural due process requirements under 25 U.S.C. §1302(8) in revocation of tribal land assignment; Martinez v. Romney, (D. N.M. 1972) challenge to tribal land assignment policies as effecting discrimination based on sex contrary to equal protection guaranties of 25 U.S.C. §1302(8).

2. Expenditure of tribal funds - tribal constitutional provisions and the role of the Secretary of the Interior.

3. Transfer of tribal land - the prohibitions of the Indian Non-Intercourse Act of 1790, 25 U.S.C. § 177, the impact of the IRA (esp. § 16 thereof, 25 U.S.C. § 476), and tribal and consolidation programs.

4. Leases of tribal land k- (a) federal statutory limitations, e.g., 25 U.S.C. §§ 391 et seq., and § 17 of the IRA, 25 U.S.C. § 477; (b) the role of the Interior Department and BIA in the negotiation and approval of tribal leases; and (c) the jurisdictional division between tribes and states over activities of non-Indian lessees of tribal land, see Horvell v. Sangre De Cristo Development Co., Civil No. 9106 (D. N.M., Judgement and Opinion entered Feb. 20, 1974).

5. Tribal lands and tribal economic development enterprises - (a) the impact of § 17 IRA corporate charters, see Op. Sol. M-30849, July 10, 1940; (b) the inherent power of tribes to charter corporations for purposes of economic development, see Op. Asso. Sol, M-36781, Aug. 25, 1969; (c) the reach of state laws and state courts over activities of tribally-chartered corporations, located on tribal land within a reservation, see Op. Asso. Sol., Id.; (d) the reach of state laws and state courts over activities of tribal corporations chartered under state law but located on tribal land within a reservation, see Memo. Asst. Sol., April 6, 1967; and (e) the reach of state laws over activities of tribal corporations located on tribal or federal lands outside of any reservation, see Mescalero Apache Tribe v. Jones, 411 U.S. 145 (1973).

E. The Power to Regulate the Use and Disposition of Individual Indian and Non-Indian Property

1. The division of power between tribal institutions and the Interior Department in regulating testate and intestate disposition of the property of tribal members - distinctions between trust property subject to federal administrative control and non-trust property subject to tribal court jurisdiction.

2. The power of the tribe to enact police regulations governing the land use and zoning of individually owned lands on-reservations, see Op. Asst. Secretary, M_____, 73 I.D. 229 (April 1971) (tribal power to ban aerial crop spraying on-reservation); ...Land Use Planning Act of 1973, H.R. Report No. 93-799 (Feb. 13, 1974) (describing tribal power to zone fee patent lands on-reservation as an unsettled issue and calling for a study of the question; the proposed Colville Water Code requiring all users to comply (regulating all water use, Indian and non-Indian, within the reservation).

3. The eminent domain powers of tribes to take by condemnation proceedings individually-owned lands on-reservation for tribal purposes. See Seneca Constitutional Rights Organization v. George, 348 F.Supp. 51 (W.D.N.Y. 1972) (inherent tribal power of eminent domain as to use-rights of individual members need not be expressed in tribal constitution); Op. Sol. M-27810, Dec. 13, 1934 (tribal eminent domain power does not extend to land owned in fee by non-Indians); the restrictions of the Indian Bill of Rights, 25 U.S.C. § 1302(5) (providing that tribes may not "take any private property for a public use without just compensation."); H.R. 11500, "The Federal Strip Mining Act of 1974" (consent of non-Indian surface owners as condition to mining of tribal sub-surface coal reserves, and the possible remedy of tribal condemnation authority).

F. The Power to Govern the Conduct of Members and Non-Members of the Tribe, and to Establish Judicial Systems to Enforce Such Power.

1. Inherent power to create tribal courts on judicial forums. See Op. Sol. M-36783, Sept. 10, 1969 (inherent power of Yankton Sioux Tribe under its non-IRA constitution to establish tribal courts); Memo So. M-36821, Mar. 19, 1971 (inherent power of Winnebago Tribe under its IRA constitution to establish a court to enforce the Tribal Hunting and Fishing Code, notwithstanding the application of P.L. 280, 18 U.S.C. § 1162).

2. Tribal Courts, Courts of Indian Offenses, and Traditional (i.e., Pueblo) Courts - Historical Development, current similarities and distinctions.

3. Power of tribes to enact codes regulating on-reservation conduct - historical developments, the 1968 Indian Civil Rights Act and a Model Tribal Code (see 25 U.S.C. § 1311) and the approval power of the Secretary of the Interior.

4. Tribal Criminal Codes and Judicial Jurisdiction - (a) the "Major Crimes" Act, 18 U.S.C. § 1153, and the issue of concurrent federal-tribal jurisdiction; (b) the "General or Federal Enclave Crimes"

Act, 18 U.S.C. § 1152, and the division of jurisdiction between federal and tribal courts over "non-major" (i.e., not covered by 18 U.S.C. 1153) offenses committed by Indians; (c) the extent of tribal territorial jurisdiction - 18 U.S.C. § 1151, "Indian country" as encompassing (1) a-l reservation lands, (2) dependent Indian communities, and (3) trust or restricted allotments; (d) the extent of tribal personal jurisdiction over members, non-member Indians and non-Indians, see Op. Sol., 77 I.D. 113 (1970) (absent express treaty reservation of jurisdiction over whites, tribes have no criminal power over non-Indians - this opinion has been declared non-authoritative as of January 1974 by the Solicitor of the Interior Department and departmental review thereof is underway); and (e) tribal constitutional and tribal code limitations on personal, territorial, and subject matter jurisdiction - tribal self-imposed restraints and Secretarial review authority.

5. Tribal Codes and Judicial Jurisdiction vis-a-vis Domestic and Family Relations - (a) use of state marriage, divorce and adoption laws as opposed to continuance or revival of tribal customary law; (b) reach of tribal courts over non-members, see Memo. Sol., Feb. 11, 1939 (tribal court may adjudicate marital status of absent non-member spouse in divorce proceeding brought by tribal member resident on-reservation; and (c) extent of state jurisdiction over tribal domestic and family matters arising on-reservation.

6. Tribal codes and Judicial Jurisdiction vis-a-vis Trade and Commercial Activities - (a) the Federal Trader's Statutes, 25 U.S.C. §§ 261-264, and the division of power over trader regulation between the BIA and the tribes, see Op. Sol. M-35040, May 20, 1948; (b) the division of jurisdiction between state and tribal courts over commercial actions arising on-reservation - the doctrines of Williams v. Lee, 358 U.S. 217 (1959), Warren Trading Post Co. v. Arizona Tax Commission, 380 U.S. 685 (1965), and Kennerly v. District Court, 400 U.S. 423 (1971).

EXCERPTS FROM THE INDIAN CIVIL RIGHTS ACT OF 1968

§ 1302. Constitutional rights

No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense.

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of $500, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

Pub.L. 90-284, Title II, § 202, Apr. 11, 1968, 82 Stat. 77.

§ 1303. Habeas corpus

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

Pub.L. 90-284, Title II, § 203, Apr. 11, 1968, 82 Stat. 78.

§ 1311. Model code

The Secretary of the Interior is authorized and directed to recommend to the Congress, on or before July 1, 1968, a model code to govern the administration of justice by courts of Indian offenses on Indian reservations. Such code shall include provisions which will (1) assure that any individual being tried for an offense by a court of Indian offenses shall have the same rights, privileges, and immunities under the United States Constitution as would be guaranteed any citizen of the United States being tried in a Federal court for any similar offense, (2) assure that any individual being tried for an offense by a court of Indian offenses will be advised and made aware of his rights under the United States Constitution, and under any tribal constitution applicable to such individual, (3) establish proper qualifications for the office of judge of the court of Indian offenses, and (4) provide for the establishing of educational classes for the training of judges of courts of Indian offenses. In carrying out the provisions of this subchapter, the Secretary of the Interior shall consult with the Indians, Indian tribes, and interested agencies of the United States.

Pub.L. 90-284, Title III, § 301, Apr. 11, 1968, 82 Stat. 78.

Legislative History. For legislative history and purpose of Pub.L. 90-284, see 1968 U.S.Code Cong. and Adm.News, p. 1837.

EXCERPTS FROM THE INDIAN REORGANIZATION ACT

[CHAPTER 576.]

AN ACT

June 18, 1934.
[S. 3645.]
[Public, No. 383.]

To conserve and develop Indian lands and resources; to extend to Indians the right to form business and other organizations; to establish a credit system for Indians; to grant certain rights of home rule to Indians; to provide for vocational education for Indians; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

Indian affairs.
Future allotment in severalty prohibited.

SEC. 2. The existing periods of trust placed upon any Indian lands and any restriction on alienation thereof are hereby extended and continued until otherwise directed by Congress.

Existing trust periods extended.

SEC. 3. The Secretary of the Interior, if he shall find it to be in the public interest, is hereby authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: *Provided, however*, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act: *Provided further*, That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation:

Restoration of lands to tribal ownership.

Provisos.
Existing valid rights not affected.

Lands in reclamation projects.

SEC. 4. Except as herein provided, no sale, devise, gift, exchange or other transfer of restricted Indian lands or of shares in the assets of any Indian tribe or corporation organized hereunder, shall be made or approved: *Provided, however*, That such lands or interests may, with the approval of the Secretary of the Interior, be sold, devised, or otherwise transferred to the Indian tribe in which the lands or shares are located or from which the shares were derived or to a successor corporation; and in all instances such lands or interests shall descend or be devised, in accordance with the then existing laws of the State, or Federal laws where applicable, in which said lands are located or in which the subject matter of the corporation is located, to any member of such tribe or of such corporation or any heirs of such member: *Provided further*, That the Secretary of the Interior may authorize voluntary exchanges of lands of equal value and the voluntary exchange of shares of equal value whenever such exchange, in his judgment, is expedient and beneficial for or compatible with the proper consolidation of Indian lands and for the benefit of cooperative organizations.

No transfers of restricted Indian lands, etc.; exception.

Provisos.
Lands may descend only to Indian tribe or successor corporation.

Descent, etc., according to applicable laws.

Voluntary exchanges for proper consolidations.

SEC. 5. The Secretary of the Interior is hereby authorized, in his discretion, to acquire through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments whether the allottee be living or deceased, for the purpose of providing land for Indians.

Acquisitions, for providing lands for Indians.

Indians residing on same reservation may organize for common welfare.

SEC. 16. Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

Effective, when ratified.

Revocation, amendments, etc.

Additional powers vested in tribe.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress.

Secretary to advise tribe of contemplated appropriation estimates.

Charter.
Issue of, to each tribe, upon petition therefor.

Proviso.
Ratification condition precedent to operation.

Powers conferred.

SEC. 17. The Secretary of the Interior may, upon petition by at least one-third of the adult Indians, issue a charter of incorporation to such tribe: *Provided*, That such charter shall not become operative until ratified at a special election by a majority vote of the adult Indians living on the reservation. Such charter may convey to the incorporated tribe the power to purchase, take by gift, or bequest, or otherwise, own, hold, manage, operate, and dispose of property of every description, real and personal, including the power to purchase restricted Indian lands and to issue in exchange therefor interests in corporate property, and such further powers as may be incidental to the conduct of corporate business, not inconsistent with law, but no authority shall be granted to sell, mortgage, or lease for a period exceeding ten years any of the land included in the limits of the reservation. Any charter so issued shall not be revoked or surrendered except by Act of Congress.

Revocation.

Inapplicable to reservation rejecting proposition.

SEC. 18. This Act shall not apply to any reservation wherein a majority of the adult Indians, voting at a special election duly called by the Secretary of the Interior, shall vote against its application. It shall be the duty of the Secretary of the Interior, within one year after the passage and approval of this Act, to call such an election, which election shall be held by secret ballot upon thirty days' notice.

Term "Indian" defined.

SEC. 19. The term "Indian" as used in this Act shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation.

"Tribe."

"Adult Indians."

The words "adult Indians" wherever used in this Act shall be construed to refer to Indians who have attained the age of twenty-one years.

Approved, June 18, 1934.

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EXCERPTS FROM PUBLIC LAW 280

§ 1360. State civil jurisdiction in actions to which Indians are parties

(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the Territory.
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section. Added Aug. 15, 1953, c. 505, § 4, 67 Stat. 589, amended Aug. 24, 1954, c. 910, § 2, 68 Stat. 795; Aug. 8, 1958, Pub.L. 85-615, § 2, 72 Stat. 545.

§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the Territory
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section. Added Aug. 15, 1953, c. 505, § 2, 67 Stat. 588, and amended Aug. 24, 1954, c. 910, § 1, 68 Stat. 795; Aug. 8, 1958, Pub.L. 85-615, § 1, 72 Stat. 545.

PUBLIC LAW 280 AMENDMENTS

SUBCHAPTER III.—JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

§ 1321. Assumption by State of criminal jurisdiction—Consent of United States; force and effect of criminal laws

(a) The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

Alienation, encumbrance, taxation, and use of property; hunting, trapping, or fishing

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

Pub.L. 90-284, Title IV, § 401, Apr. 11, 1968, 82 Stat. 78.

Legislative History. For legislative history and purpose of Pub.L. 90-284, see 1968 U.S.Code Cong. and Adm.News, p. 1837.

§ 1322. Assumption by State of civil jurisdiction—Consent of United States; force and effect of civil laws

(a) The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

Alienation, encumbrance, taxation, use, and probate of property

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

Force and effect of tribal ordinances or customs

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

Pub.L. 90-284, Title IV, § 402, Apr. 11, 1968, 82 Stat. 79.

APPENDIX E

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

TRIBAL CONTRACTING GUIDELINES

Notice of Development

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

Notice is hereby given that the Bureau of Indian Affairs has developed the following guidelines which will be used in contracting with Indian tribes:

TRIBAL CONTRACTING GUIDELINES

SECTION I -- INTRODUCTION

Recently the Commissioner of Indian Affairs announced a course of action designed to offer all Indian Tribes the opportunity to operate Bureau programs to the extent possible under contracts. (Indian Tribe, as used in these guidelines, means a Federally recognized Indian Tribe, Community, Corporation, body, or organization, including like Native entities in Alaska).

Since that announcement, questions have arisen concerning the extent to which the Bureau can contract its programs to Indian Tribes and what activities must be performed by the Government.

The following guidelines are intended to define the degree to which each program may be contracted to an Indian Tribe and to identify parameters that will insure accomplishment of basic responsibilities.

They will provide a basis for initial discussions and for answering basic questions for both Tribal and Bureau personnel relative to the self determination concept. Although there may be a few instances that will require specific review and interpretation, this presentation should provide a common understanding of the policy and principles of Tribal contracting of Bureau programs.

SECTION II -- GENERAL

1. All Tribes will have been offered the opportunity to contract with the Bureau to operate Bureau programs by the time these guidelines are issued. In some instances, decisions may have been deferred pending further study. It is incumbent on the Bureau staff to be fully conversant with the contracting policy and procedures of the Bureau and the criteria and limitations contained in these guidelines to provide proper advice and guidance to Tribes in these matters.

2. When a Tribe has decided to undertake the operation of one or more Bureau programs by contract, it shall develop a Plan of Operation. This Plan will contain, as a minimun, the work requirements necessary to assure adequate accomplishment of program objectives, staffing and staff qualifications, and itemized estimate of costs.

The Plan of Operation may be developed independently by the Tribe; or, assistance and guideance may, if requested, be furnished by appropriate

Bureau personnel.

3. The Plan of Operation and a Tribal resolution expressing the Tribe's desire to contract will then be forwarded through appropriate channels to the Contracting Office for consideration. The Contracting Office will obtain a technical review and evaluation from appropriate program staff prior to taking action on the Tribe's Plan of Operation, and legal review as considered by the Contracting Office to be appropriate. Prior to approval of any contract with a Tribe that may affect terms and conditions of Bureau employment, the Contracting Office through appropriate channels shall meet with such labor organizations as may be the exclusive representative(s) of employeeswho would be adversely affected by such approval and, in accordance with the requirements of Executive Order 11491, as amended, shall consult with such labor organization(s) as to the reasons for contracting the program contemplated.

4. Maximum Tribal input will be effected during the contract planning and development stages. After the contract is signed, however, the contractor, as in any other contract, will be required to comply with the provisions of the contract. Any proposed changes to contracted activities will be fully dicsussed by the contractor and Bureau personnel. All modifications to the contract require formal approval of the Contracting Officer.

5. The Bureau if responsible for insuring that funds allocated to its programs are used properly and effectively and therefore will closely review the financial management of all contracts. Tribal contractors will

be expected to utilize sound business practices and will be required to maintain an accounting system in accordance with generally accepted accounting principles and standards. Tribes may request and expect assistance and guidance from Bureau personnel in developing appropriate accounting systems.

Tribes will be subject to the same fiscal limitations as are imposed on the Bureau.

6. All activities contracted for pursuant to these guidelines shall be subject to any Bureau approvals required by law or regulation whether or not specifically mentioned herein.

7. Facilities, equipment and records now being used to carry out any program by the Bureau may be made available, as Government furnished property (GFP), to a Tribe which undertakes the program under contract, when authorized by law and approved by the Bureau. The standard GFP Clause shall be incorporated in applicable contracts.

8. Use of GSA support is allowable with cost-reimbursement contracts. Ordering of supplies from General Services Administration (GSA) stores shall be in accordance with GSA Regional Office policy.

Ordering of equipment, materials, and supplies from a Federal Supply Service contractor is at the supplier's option.

GSA vehicle use must be approved on an individual contract basis by GSA Regional Office.

9. The Bureau can contract with a Tribe, an association of Tribal bodies, a Tribal corporation, or any other legal entity organized by Tribes.

When an association of Tribal bodies, tribal corporation, or other recognized Tribal organization does wish to contract, the Bureau may contract with such body, corporation or organization with the consent of the Tribe or Tribes affected.

SECTION III --PROGRAMS SUITABLE FOR CONTRACTING

A. EDUCATION AND TRAINING

1. School Operations. All functions related to school operations can be contracted, either as a total school or by unit components, such as food services, pupil transportation, maintenance, or residential living.

Detailed guidelines - including planning, eligibility, limitations, fiscal and program auditing requirements, technical assistance available, a sample proposal and procedural steps - are contained in 20 BIAM 6, dated April 24, 1972.

Requirements and limitations:

(a) Education programs shall meet or exceed established State standards;

(b) Transportation equipment and personnel shall meet applicable licensing and safety standards;

(c) Food service facilities shall be inspected periodically by an appropriate Health Service Authority and maintained in an acceptable condition;

(d) Food service shall conform with the minimum nutritional requirements prescribed by U.S. Department of Agriculture and/or the State Department of Education; and

(e) Pupil attendance shall conform to established State or tribal standards.

Waivers for these and other requirements are authorized by 20 BIAM 6 and can be made by the Bureau when formally requested by the contractor and professionally justified as to the educational soundness for the exceptions.

2. Supplementary Education Programs. Any Elementary and Secondary Education Act (P.L. 93-380) project component which may be performed by a Tribe should be identified by the Bureau in consultation with the Tribal officials during the project planning stage and designed for performance under contract.

Requirements and limitations: When supplementary education projects are approved and funds allocated therefor, it becomes the responsibility of the Bureau to insure that the project is carried out as approved. Tribes contracting to perform such projects will be expected to fulfill this obligation.

3. Career Development. Tribes may contract for the total administration of a Scholarship Program or may limit its service to recommendations to the Bureau for selection of eligible grantees and determination of amount of grant, and student counseling.

Grants may be made directly to the student by the Bureau on advice from the Tribe, or from funds provided to the Tribe for distribution to the students on approval by the Contracting Officer of a request supported by names and amounts.

Requirements and limitations: Scholarship grants will be made on the basis of criteria contained in 62 BIAM 5. There will be strict accounting for all grant funds, including refunds from schools in case of dropout.

4. Adult Vocational Training (AVT) and Direct Employment Programs. All direct elements of AVT and Direct Employment Programs can be performed under contract with Tribes including placement services, job counseling, relocation assistance, and other duties connected with finding employment and establishing the client in a job and in the new environment.

5. Aid to Public Schools. Such contracts may be made for determination of need; developing, in cooperation with school officials and the Indian Education Committee(s), a program to satisfy such needs; and monitoring the program, as provided in 25 CFR 33.

B. COMMUNITY SERVICES

Social Services. All operational components of the Social Services element can be contracted with Tribes. Administration of this program will include counseling for recipients of services and monitoring of foster home and institutional care. The same budgetary standards used by the State welfare agency for State public assistance programs are used to determine the individual's or family's assistance needs.

Grants may be made directly to eligible recipients by the Bureau on advice from the Tribe, or from funds provided to the Tribe for distribution to eligible recipients on approval by the Contracting Officer of a request supported by names and amounts.

Requirement: When no official Tribal Standards have been adopted, the standards established by the State for foster homes and foster care should be observed in so far as possible, taking into consideration the preservation of Indian life styles peculiar to the geographical location.

C. LAW ENFORCEMENT

1. Detention Center Operations. Contracts for the operation of detention centers shall require full consideration for the safety, health and protection of individual rights of all inmates.

Standards of health, safety, and sanitation will be determined by joint agreement between the Bureau of Indian Affairs and Public Health Service in consultation with Tribal officials.

Personnel must meet qualification and physical standards prescribed by applicable codes and regulations.

Facilities must be kept in a good state of repair.

2. Enforcement Services. This program involves the furnishing of uniformed police officers and all equipment necessary to provide investigation, enforcement and protection services, subject to local conditions of jurisdiction and State and Federal law where applicable.

Policemen must be adequately trained, physically fit and meet rigid moral standards not less than those required for Bureau employed policemen.

Contracts may not be entered into for enforcement services where Courts of Indian Offenses (25 CFR) are provided.

D. HOUSING

1. Housing Improvement Program. A Tribe may contract for the Bureau Housing Improvement Program for the total program which may encompass the selection of houses for repair, determination of extent of repair and performance of the work.

Requirement and limitations: Houses selected for repair and the determination of the extent of repair shall conform with Bureau standards.

2. Housing Development. This program may be contracted.

E. ROAD MAINTENANCE PROGRAMS

Road maintenance programs can be contracted with Tribes.

Requirements and limitations: Maintenance is limited to roads listed on the Indian Roads Systems Map.

F. COMMERCIAL DEVELOPMENT

1. Credit and Financing. The only element in the Credit Program which may be contracted with Tribes is the furnishing of management and technical assistance to loan and grant recipients and the maintenance of a Credit Office where applicants could receive advice on credit programs, make application, and be counseled on procedures and the responsibilities of a loan recipient.

Requirements and limitations: Approval and administration of loans must be performed by the Bureau.

2. Commercial Enterprise Development. Most operational components of this activity may be contracted with the exception of the financial assistance portion of the Enterprise Development Activity made under provisions of Title IV of the Indian Financing Act of 1974.

SECTION IV -- PROGRAMS NOT SUITABLE, OR PARTIALLY SUITABLE, FOR CONTRACTING

A. TRUST SERVICES

1. Real Estate Services cannot be contracted except for appraisals functions.

2. Indian Trust Fund Programs cannot be contracted.

3. Forestry Management cannot be contracted as a program; however, certain work elements such as tree planting and thinning can be contracted on a project basis.

4. Range Management cannot be contracted as a program; however, certain work elements such as development of range use plans, operation and maintenance projects, fencing and miscellaneous technical services can be contracted on a project basis.

Approval of carrying or grazing capacity, establishing grazing fee rates and executing grazing permits are key protective functions required by the trust responsibilities of the Secretary.

B. TRUST FACILITATION

1. Soil and Moisture Conservation Programs cannot be contracted as a program but operational elements such as land use investigation and planning, soil stabilization and improvement, water and resource management,

operation and maintenance, and miscellaneous technical services can be contracted on a project basis.

2. Irrigation Operation and Maintenance Programs can be contracted (except for collection of and accounting for funds).

3. Environmental Quality Programs may not be contracted as a program; however, certain work elements such as initial surveys and assembly of statements may be contracted on a project basis.

SECTION V -- PROJECTS SUITABLE FOR CONTRACTING

(Contract Opportunities of a Project Nature as Distinguished From Program Operations)

In Sections III and IV, mention was made of some of the project type contract opportunities which Indian Tribes may wish to undertake. This is a summary, not all inclusive, demonstrative of such projects:

1. Construction projects including roads, buildings, building repair and improvement, dams, irrigation structures.

2. Tree planting, thinning.

3. Studies and investigations of various types.

4. Safety promotion and instructions.

5. Training projects.

6. Comprehensive plans.

7. Tribal membership rolls.

8. Mapping and resources overlays.

9. Special education programs.

10. Soil and Moisture Conservation projects such as seeding, brush clearing, erosion control practice.
11. Industrial development projects.
12. Building and facilities maintenance.

SECTION VI -- FUNCTIONS NOT SUITABLE FOR CONTRACTING

The following cannot be considered as contractable items:

1. A position, such as the Agency Superintendent or Reservation Programs Officer.
2. Finance or budget functions which involve decisions connected with the integrity of an accounting for funds.
3. Functions with primary responsibility for accounting for, control of, and general management of Government property.
4. Courts of Indian Offenses.
5. Functions of Area or Agency Special Officer.

Interested members of the public may submit written comments and suggestions on these tribal contracting guidelines to the Director of Administration, Bureau of Indian Affairs, 1951 Constitution Avenue, N. W., Washington, D. C. 20245, within 30 days after the date of publication of this notice in the Federal Register. The comments and suggestions submitted will be considered and the guidelines revised as needed.

These guidelines will be issued as a new Supplement 1 to Part 20 of the Bureau of Indian Affairs Manual and will become effective on the date the supplement is signed. Copies of the supplement will be

distributed to Federally recognized Indian tribes. In addition, the Bureau manual and its supplements are available for inspection by Indian tribes and other members of the public at the Bureau's Agency, Area and Central Office locations.

Commissioner of Indian Affairs

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Limitations on Carryovers of Unused Credits and Capital Losses

Correction

In the correction appearing in the first column at page 38906 in the issue of Monday, November 4, 1974, in line three the reference to "October 18, 1974," should read "October 16, 1974."

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[41 CFR Parts 14H-1, 14H-3, 14H-30]

CONTRACTING WITH INDIAN TRIBES

Notice of Proposed Rulemaking

NOVEMBER 4, 1974.

Chapter 14H of 41 CFR was published beginning on page 13659 of the August 26, 1969, FEDERAL REGISTER (38 FR 13659) and subsequently amended. Chapter 14H contains the Bureau of Indian Affairs Procurement Regulations (BIAPR).

Notice is hereby given that it is proposed to amend Chapter 14H of Title 41 of the Code of Federal Regulations by adding a new § 14H-1.270 to Subpart 14H-1.2 of Part 14H-1; by adding a new Part 14H-3 with new Subparts 14H-3.2, 14H-3.3, and 14H-3.8; and by adding a new Part 14H-30 with new Subparts 14H-30.2 and 14H-30.4. This amendment is proposed pursuant to the authority contained in the Act of November 2, 1921, Ch.115, 42 Stat. 208 (25 U.S.C. 13); 41 CFR 14-1.008; and section 23 of the Act of June 25, 1910 (36 Stat. 861, as amended; 25 U.S.C. 47). The purpose of the amendment is to provide greater ease in contracting with Indian tribes and to define reservation programs, Indian reservation, Indian tribes, and Indian tribal contractor.

It is the policy of the Department of the Interior, whenever practicable to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed amendment to the Director of Administration, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Washington, D.C. 20245, on or before December 9, 1974.

It is proposed to amend Chapter 14H of Title 41 of the Code of Federal Regulations as follows:

PART 14H-1—GENERAL

1. By adding a new § 14H-1.270 to Subpart 14H-1.2 of Part 14H-1, to read as follows:

§ 14H-1.270 Definitions and terms pertaining to contracts with Indian tribes.

§ 14H-1.270-1 Reservation program.

"Reservation program" means all or any part of a program for operating reservation activities that could be performed by an Indian tribe as determined by the Commissioner and/or authorized by law.

§ 14H-1.270-2 Indian reservation.

"Indian reservation" means all Indian reservations, former Indian reservations in Oklahoma, and lands occupied by other Indian groups and by Alaska Native communities, including all or any part of any of the twelve regions in Alaska established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), that are recognized by the Secretary, or his designee.

§ 14H-1.270-3 Indian tribe.

"Indian tribe" means any Indian tribe, band, nation, or other organization or community, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, and includes village corporations, regional corporations, and Native associations provided for or recognized by the Alaska Native Claims Settlement Act (85 Stat. 688).

§ 14H-1.270-4 Indian tribal contractor.

"Indian tribal contractor" means the tribal governing body of an Indian tribe as defined in § 14H-1.270-3 of this chapter, any public non-profit type corporation approved by an Indian tribal governing body which serves as a governmental instrumentality of an Indian tribe, or any organization legally established by one or more Indian tribal governing bodies for the benefit of their respective members which is controlled and operated by these Indian tribal governing bodies.

PART 14H-3—PROCUREMENT BY NEGOTIATION

2. By adding a new Part 14H-3 consisting of Subparts 14H-3.2, 14H-3.3, and 14H-3.8, to read as follows:

Subpart 14H-3.2—Circumstances Permitting Negotiation

Sec.

14H-3.210 Impractical to secure competition by formal advertising.

14H-3.215 Otherwise authorized by law.

14H-3.215-70 Buy Indian Act.

Subpart 14H-3.3—Determinations, Findings, and Authorities

14H-3.301 General.

Subpart 14H-3.8—Price Negotiation Policies and Techniques

14H-3.807 Pricing techniques.

14H-3.807-2 Requirement for price or cost analysis.

14H-3.807-3 Cost or pricing data.

AUTHORITY: Act of November 2, 1921, Ch. 115, 42 Stat. 208 (25 U.S.C. 13); 41 CFR 14-1.008; sec. 23, Act of June 25, 1910 (36 Stat. 861, as amended; 25 U.S.C. 47).

Subpart 14H-3.2—Circumstances Permitting Negotiation

§ 14H-3.210 Impractical to secure competition by formal advertising.

Indian reservation programs can be performed successfully only by an Indian tribal governing body or by an entity approved by such a body. Therefore, a contract for an Indian reservation program will be made only with an Indian tribal contractor as defined in § 14H-1.270-4 of this chapter.

§ 14H-3.215 Otherwise authorized by law.

§ 14H-3.215-70 Buy Indian Act.

Section 23 of the Act of June 25, 1910 (36 Stat. 861; 25 U.S.C. 47) referred to as the Buy Indian Act permits negotiation of contracts with Indians to the exclusion of non-Indians, and, when used, should be cited in the contract document.

Subpart 14H-3.3—Determinations, Findings, and Authorities

§ 14H-3.301 General.

The following class determination and findings apply to all contracts and contract modifications entered into with an Indian tribal contractor as defined in § 14H-1.270-4 for the performance of reservation programs and authorize negotiation without competition. This section shall be cited on all contracts entered into with an Indian tribal contractor as defined in § 14H-1.270-4 of this chapter.

BUREAU OF INDIAN AFFAIRS

DETERMINATIONS AND FINDINGS

AUTHORITY TO NEGOTIATE A CLASS OF CONTRACTS

Based upon the following findings and determinations, the class of contracts for

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reservation programs may be negotiated without competition pursuant to authority of 41 U.S.C. 252(c)(10) and as implemented by § 1-3.210 of the Federal Procurement Regulations, by any contracting officer.

Findings

(a) The Bureau of Indian Affairs, through its various contracting officers, proposes to enter into contracts by negotiation without competition for the performance of programs and the furnishing of services from Indian tribal contractors, residing on Indian reservations.

(b) National policy proclaims that Indian tribes be given an opportunity for self-determination in resolving the many facets that pertain to their well being. Contracting with tribal governments for the performance of various programs and for the furnishing of various kinds of services is one method toward the accomplishment of that goal. Accordingly it is the policy of the Department of the Interior that the Bureau of Indian Affairs through its various field establishments allow and encourage tribal governments to enter into contracts with the Bureau of Indian Affairs for the performance of Indian reservation programs.

(c) It is not conducive to Indian self-determination or feasible to formally advertise or to attain competition for the performance of programs or the furnishing of services by contract on an Indian reservation when the program or services fall in the category of those that could be performed by an Indian tribal contractor for its members with the governing body of the Indian tribe or such other organization established by the governing bodies of one or several Indian tribes.

(d) Contracts with Indian tribal contractors for the performance of various programs or for the furnishing of various kinds of services on Indian reservations are contracts for which it is hereby determined to be impracticable to obtain competition and therefore such contracts with Indian tribal contractors for the performance of Indian reservation programs shall of necessity be negotiated without regard to competition as authorized by § 1-3.210 of the Federal Procurement Regulations.

Subpart 14H-3.8—Price Negotiation Policies and Techniques

§ 14H-3.807 Pricing techniques.

§ 14H-3.807-2 Requirement for price or cost analysis.

Except for initial contracts or other agreements for the performance of reservation programs, the requirements of § 1-3.807-2 are optional with contracting officers when contracting with an Indian tribal contractor pursuant to Subpart 14H-3.2 when a plan of operation has been presented and accepted.

§ 14H-3.807-3 Cost or pricing data.

Except for initial contracts or other agreements for the performance of reservation programs, the requirements of § 1-3.807-3(a) are optional with the contracting officer when an Indian tribal contractor is involved pursuant to Subpart 14H-3.2 if the initial plan of operation contains itemized estimates of costs.

PART 14H-30—CONTRACT FINANCING

3. By adding a new Part 14H-30 consisting of Subparts 14H-30.2 and 14H-30.4, to read as follows:

Subpart 14H-30.2—Basic Policies

Sec.

14H-30.213 Financial information and analysis.
14H-30.214 Appropriate information—purposes.
14H-30.214-1 Cash flow forecast, and estimated financial statements.
14H-30.214-2 Realistic assumptions.
14H-30.214-3 Estimated profit and loss statements and balance sheets.

Subpart 14H-30.4—Advance Payments

14H-30.403 Interest.
14H-30.404 Standards—amounts—need.
14H-30.406 Responsibility—delegation of authority.
14H-30.410 Findings, determinations, and authorizations.
14H-30.411 Application for advance payment.
14H-30.412 Action by contracting officer.
14H-30.414 Agreement for special bank account and contract provisions.
14H-30.414-1 Form of agreement for special bank account.
14H-30.414-2 Contract provisions for advance payments.

AUTHORITY: Act of November 2, 1921, Ch. 115, 42 Stat. 208 (25 U.S.C. 13); 41 CFR 14-1.003; sec. 23, Act of June 25, 1910 (36 Stat. 861, as amended; 25 U.S.C. 47).

Subpart 14H-30.2—Basic Policies

§ 14H-30.213 Financial information and analysis.

The requirements of § 1-30.213 are optional with the contracting officer when contracting with an Indian tribal contractor pursuant to Subpart 14H-3.2 when a plan of operation has been presented and accepted.

§ 14H-30.214 Appropriate information—purposes.

The requirements of § 1-30.214 are optional with the contracting officer when contracting with an Indian tribal contractor pursuant to Subpart 14H-3.2.

§ 14H-30.214-1 Cash flow forecast and estimated financial statements.

The requirements of § 1-30.214-1 are optional with the contracting officer when contracting with an Indian tribal contractor pursuant to Subpart 14H-3.2.

§ 14H-30.214-2 Realistic assumptions.

The requirements of § 1-30.214-2 are optional with the contracting officer when contracting with an Indian tribal contractor pursuant to Subpart 14H-3.2.

§ 14H-30.214-3 Estimated profit and loss statements and balance sheets.

The requirements of § 1-30.214-3 are optional with the contracting officer when contracting with an Indian tribal contractor pursuant to Subpart 14H-3.2.

Subpart 14H-30.4—Advance Payments

§ 14H-30.403 Interest.

Advance payments made under nonprofit contracts to Indian tribal contractors, individual Indians and other Indian organizations will not require the payment of interest.

§ 14H-30.404 Standards—amounts—need.

An advance payment to an Indian tribal contractor, as defined in § 14H-1.270-4, is an exception under § 1-30.404(b).

§ 14H-30.406 Responsibility—delegation of authority.

Authority to make advance payments not to exceed $250,000 to Indian tribal contractors and other Indians who operate a totally Indian owned and controlled non-profit business and who qualify for contracts with the Bureau of Indian Affairs shall be exercised by the Area Directors. Advance payments shall be made based upon written findings, determinations and authority as provided for in § 1-30.405 that the making of the advance payments is in the public interest and that adequate financing cannot be obtained elsewhere. The advance payment clause in § 14H-30.414-2 shall be referred to in the determinations, findings, and authority and shall be incorporated into the contract.

§ 14H-30.410 Findings, determinations, and authorizations.

The following is format of the Findings, Determinations, and Authorization for advance payment for use with contracts with Indian tribal contractors and other Indians who operate a totally owned and controlled non-profit business and who have contracts with the Bureau of Indian Affairs. A copy of the Findings, Determinations, and Authorization shall be inserted in the contract file.

BUREAU OF INDIAN AFFAIRS

FINDINGS AND DETERMINATIONS AND AUTHORIZATION FOR ADVANCE PAYMENT

FINDINGS

1. I hereby find that:

a. The Bureau of Indian Affairs has entered (intends to enter) into a contract as indicated below. (Use appropriate language).
Type of Contract: (Indicate type).
Amount of Contract: (State amount).
Contractor: (Indicate name of contractor).
Purpose: (Give description of contract).
Contracting Office: (Give name of contracting office).

b. (Note to Contracting Officer: Summarize the specific facts and significant circumstances concerning the contract and the contractor, which, together with the other findings, will clearly support the determination below).

c. An advance payment has been requested by the contractor and is required for prompt and efficient performance of the services under this contract which will be of benefit to the Bureau. No means of adequate financing other than by an advance payment are available to the Contractor.

d. The attached advance payment clause that will be included in the contract contains appropriate provisions for the protection of the Government as security for the advance payment. These include provisions that the advance payment(s), and all progress and final contract payments made, will be deposited in a special bank account, and that the Government will have a paramount lien upon (1) the credit balance in the special bank account, (2) any supplies contracted for, and (3) any material or property acquired for the performance of the contract.

e. The security provisions of the advance payment clause that will be used are deemed adequate.

f. Because of the lack of financial resources, the Contractor is not in a position to pay interest and it should not be charged on the advance payment(s).

g. The Bureau is committed to help develop Indian organizations to attain financial and managerial viability.

DETERMINATIONS

2. Upon the foregoing findings, I hereby determine that the making of an advance payment(s) without payment of interest, except as provided in the attached advance payment clause that will be included in the contract, is in the public interest.

AUTHORIZATION

Upon the findings and determination stated above, an advance payment not to exceed the amount stated below is hereby authorized pursuant to 41 U.S.C. 255 upon terms and conditions as contained in the advance payment clause to be included in the contract, a copy of which is attached thereto. The amount of the advance payment(s), at any time outstanding, shall not exceed the unpaid contract price nor the contractor's estimated interim needs arising during the reimbursement cycle. Amount of advance payment shall not exceed thirty (30) percent of the contract amount including any modification.

Signature: ----------
Title: ----------
Date: ----------

§ 14H-30.411 Application for advance payment.

Paragraphs (a), (d), and (e) of § 1-30.411 are optional with the contracting officer when contracting with an Indian tribal contractor pursuant to Subpart 14H-3.2.

§ 14H-30.412 Action by contracting officer.

Paragraphs (c) and (d) of § 1-30.412 are optional with the contracting officer when contracting with an Indian tribal contractor pursuant to Subpart 14H-3.2.

§ 14H-30.414 Agreement for special bank account and contract provisions.

§ 14H-30.414-1 Form of agreement for special bank account.

For all advance payments made to Indian tribal contractors and other Indians who operate a totally owned and controlled non-profit business, the form of agreement and modification given in paragraphs (a)-(d) of this section should be used.

(a) The following is the form of agreement for a special bank account for advance payments:

AGREEMENT FOR SPECIAL BANK ACCOUNT FOR ADVANCE PAYMENT(S)

(1) This agreement entered into between the United States of America, hereinafter called the "Government," Contractor, and Bank, each represented by the officials executing this agreement.

(2) The Government and the Contractor entered into the Contract(s) or Supplemental Agreement(s) thereto, providing for the making of advance payment(s) to the Contractor. Copy of the advance payment clause included in the contract is attached to and made a part of this agreement.

(3) The advance payment clause requires that amounts advanced to the Contractor be deposited in a special Bank Account at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U.S.C. 264), separate from the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(4) This Special Bank Account shall be designated as indicated in paragraph (7) of this agreement.

(5) In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:

(i) The Government shall have a lien upon the credit balance in said account to secure the repayment of all advance payments made to the Contractor, which lien shall be superior to any lien or claim of the bank with respect to such account.

(ii) The Bank will be bound by the provisions of the advance payment clause relating to the deposit in and withdrawal of funds from the Special Bank Account, but shall not be responsible for the use of funds withdrawn from said account. Upon receipt by the Bank of written directions of any kind from the Contracting Officer, or from the duly authorized representative of the Contracting Office, pertaining to the use of the funds in the Special Bank Account upon Department of the Interior, Bureau of Indian Affairs stationery and purporting to be signed by the Contracting Officer or the Contracting Officer's authorized representative, the Bank shall act thereon and insofar as the rights, duties, and liabilities of the Bank are concerned, the written directions shall be conclusively deemed to have been properly issued and filed with the Bank by the Department of the Interior, Bureau of Indian Affairs.

(iii) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to the Special Bank Account at all reasonable times and for all reasonable purposes, including (but without limiting the generality thereof) the inspection or copying of such books and records and any and all memoranda, checks, correspondence or documents appertaining thereto. Such books and records shall be preserved by the Bank for a period of six (6) years after the closing of the Special Bank Account.

(6) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify the Contracting Officer.

(7) The Bank, Contractor, and Government, by executing this agreement, are bound by all of the provisions contained in the advance payment clause attached, which is made a part of the contract.

(8) The contract number and purpose of the contract(s) or supplemental agreement(s) referred to above are as follows:

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(9) The Special Bank Account shall be designated as "SPECIAL BANK ACCOUNT NUMBER ____ Bureau of Indian Affairs.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the date and year written below:

Date ----------, 19--

CONTRACTOR

Name: ----------

Name & Title of Representative: ----------

Complete Mailing Address: ----------

BANK

Name: ----------

Name & Title of Representative: ----------

Complete Mailing Address: ----------

UNITED STATES OF AMERICA, DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs: ----------

Complete Mailing Address: ----------

Name and Title of Contracting Officer: ----

(b) The following instructions apply to the form of agreement shown in paragraph (a) of this section:

(1) Under paragraph (6) of the agreement, state the contract number and describe the purpose of the contract in brief but sufficient detail to convey a general understanding of its nature. If the contract uses a descriptive title to designate its purpose, that description should be used.

(2) Insert, in the blank space in paragraph (7) of the agreement, the number assigned by the Bank as the Account Number for the "Special Bank Account."

(3) The agreement should be dated on the date it is signed by the Contracting Officer.

(4) The complete mailing address of the bank is necessary as the advance payment check and all progress payment checks will be mailed to the bank. The zip code is required.

(5) The Contracting Officer should not sign the agreement until authority to make the advance payment has been obtained.

(c) The following is the form of modification of an agreement for a special bank account for advance payments:

AGREEMENT FOR SPECIAL BANK ACCOUNT

Modification Number ------

(1) The Agreement for Special Bank Accounted dated ------, 19--, is modified as follows:

(2) The contract number and the purpose of the contract is as follows:

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(3) The Special Bank Account number is indicated as follows:

IN WITNESS WHEREOF, the parties hereto have caused this modification to be executed as of the date and year written below.

Date ---------- 19--

Name of Contractor	Name of Bank
Signature	By ----------
By ----------	
Name and Title of Contractor's Representative	Name and Title of Bank's Representative

UNITED STATES OF AMERICA
Acting Through
The Bureau of Indian Affairs

Signature

By .....
Name and Title of Contracting Officer

(d) The following instructions apply to the form of modification of an agreement shown in paragraph (c) of this section:

(1) The date of the original Agreement for Special Bank Account should be indicated in the first line of paragraph (1) of the modification.

(2) Under paragraph 2 of the modification, state the contract number and describe the purpose of the contract. If the purpose given in paragraph (6) of the original agreement is changed, describe it. Otherwise repeat the original description.

(3) Under paragraph (3) of the modification, indicate the Special Bank Account Number if a new one is being issued. If the original number is being used, repeat it.

(4) If a change is not made under either paragraphs (2) or (3) of the modification, then no modification of the original agreement is necessary.

(5) If a modification is required, it should be dated when signed by the Contracting Officer.

§ 1111-30.414-2 Contract provisions for advance payments.

The contract clause for use when an advance payment is made or to be made on a contract with an Indian tribal contractor and other Indians who operate a totally Indian owned and controlled business follows:

ADVANCE PAYMENT

(a) *Amount of advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment(s) to the Contractor. No advance payment(s) shall be made (1) without the Contracting Officer's approval as to the financial necessity therefor; and (2) in an amount in excess of that stated in paragraph (n)(1) hereof.

(b) *Special bank account.* Until the advance payment(s) made hereunder is liquidated and the Contracting Officer approves in writing the release of any funds due and payable to the Contractor, the advance payment(s) and all other payments (progress, partial, and final) made under the contract shall be made by check payable to the Contractor but mailed to the bank, where the special bank account is mantained as stated in the Agreement for Special Bank Account. The check must be marked for "Deposit in Special Bank Account Number ....., Bureau of Indian Affairs." The Agreement for Special Bank Account shall designate the account number. No part of the funds deposited in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be only by check of the Contractor, unless countersigning on behalf of the Government by the Contracting Officer or such other person as he may designate in writing is determined to be in the best interest of the Government and the Contracting Officer notifies the Contractor and bank in writing that countersigning will be required.

(c) *Use of funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for materials, labor, administrative and overhead expenses and other purposes required for this contract (including, without limitation, payments incident to termination for the convenience of the Government) and properly allocable thereto in accordance with generally accepted accounting principles (subject to any applicable provision of contract cost principles and procedures in 41 CFR Part 1 15 or other agency cost principles and procedures, if any, which are made part of this contract), or for the purposes of reimbursing the Contractor for such payments, and for such other purposes as the Contracting Officer may approve in writing. If this is a cost reimbursement contract, the funds in the Special Bank Account may be withdrawn by the Contractor solely for the purpose of making payments for items of allowable costs as defined in clause titled "ALLOWABLE COST, FIXED-FEE AND PAYMENT" of this contract. Any interpretation required as to the proper use of funds shall be made in writing by the Contracting Officer.

(d) *Return of funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Contracting Officer, the Contractor shall repay to the Government such part of the unliquidated balance of the advance payment as shall in the opinion of the Contracting Officer be in excess of the Contractor's current requirements or when added to total advances previously made and liquidated are in excess of the amount specified in paragraph (n)(1) hereof or are no longer to be made available to the Contractor because of default, or abuse in their use, or for such other reasons as the Contracting Officer may specify. In the event the Contractor fails to repay such part of the unliquidated balance of the advance payment when so requested by the Contracting Officer, all or any part thereof may be withdrawn from the Special Bank Account by check(s) made payable to the Bureau of Indian Affairs signed by the Contracting Officer or by an official of the Bureau of Indian Affairs authorized in writing by the Contracting Officer to take such action. Such withdrawals shall be applied in reduction of the advance payment(s) then outstanding hereunder. The Contracting Officer shall notify the contractor and the bank of the action taken.

(e) *Liquidation.* If not otherwise liquidated, the advance payment(s) made hereunder shall be liquidated as herein provided. When the sum of all the estimated payments remaining due on the contract approximate the unliquidated amount of the advance payment(s), the Contracting Officer shall thereafter withhold further payments due on the Contract represented by proper invoiced amount(s) submitted by the Contractor, and apply the amount(s) withheld against the liquidation of the advance payment until the advance payment has been fully liquidated. If, upon completion or termination of the contract or for other reasons, the entire advance payment(s) is not fully liquidated by the process indicated above and the Contractor does not repay the balance due upon request, then the balance thereof shall be offset against any sums otherwise due or which may become due to the Contractor from the Government on any other contracts or from any source.

(f) *Interest charge.* No interest will be charged on the amount of the advance payment(s), but any interest earned on the advance payment(s) including sub-advances or contract earnings deposited in the Special Bank Account shall be used in the performance of the contract and to liquidate the advance payment(s) made.

(g) *Bank agreement.* Before an advance payment(s) is made hereunder, the Contractor shall submit to the Contracting Officer, in the form prescribed, an Agreement for Special Bank Account, in triplicate, signed by the contractor and an official of the bank in which the Special Bank Account is established as the depository for the advance payment(s) and other payments. The agreement shall clearly set forth the character of the Special Bank Account and the responsibilities of the Contractor, the bank and the Contracting Officer thereunder. Wherever possible, such bank shall be a member of the Federal Reserve System, or an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935, 49 Stat. 684, as amended; 12 U.S.C. 264).

(h) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payment(s) made hereunder.

(i) *Lien on property under contract.* Any advance payment(s) made under this contract shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract. The Government's lien shall apply to all material and other property acquired for or allocated to the performances of this contract, except to the extent that the Government by virtue of any other provisions of this contract, or otherwise, shall have valid title to such supplies, materials, or other property as against other creditors of the Contractor. The Contractor shall identify, by marking or segregation, all property which is subject to a lien in favor of the Government by virtue of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on his books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, inter alia, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payment(s) then outstanding hereunder.

(j) *Insurance.* The Contractor represents and warrants that he is now maintaining with responsible insurance carriers, (1) insurance upon his own plant and equipment against fire and other hazards to the extent that like properties are usually insured by

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other operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workmen compensation laws. The Contractor agrees that, until work under this contract has been completed and the advance payment(s) made hereunder has been liquidated, he will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, sub-assemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificate with respect to his insurance as the Contracting Officer may from time to time require.

(k) *Default provisions.* Upon the happening of any of the following events of default, (1) termination of this contract by reason of fault of the Contractor; (2) a finding by the Contracting Officer that the Contractor (i) has failed to observe any of the covenants, conditions, or warranties of these provisions or has failed to comply with any material provision of this contract, or (ii) has so failed to make progress or is in such unsatisfactory financial condition as to endanger performance of this contract; or (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, or (iv) is delinquent in payment of taxes, or of the costs of performance of this contract in the ordinary course of business; (3) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property or institution of bankruptcy, reorganization, arrangement, or liquidation proceedings by or against the Contractor; (4) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account; or (5) the commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may in its discretion and upon written notice to the Contractor and Bank, withhold further withdrawals from the Special Bank Account and withhold further payments on this contract. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor and Bank, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances:

(A) Withdraw all or any part of the balance in the Special Bank Account by checks made payable to the Bureau of Indian Affairs signed solely by an official of the Bureau of Indian Affairs, authorized in writing by the Contracting Officer to take such action, and apply such amounts in reduction of the advance payment(s) then outstanding hereunder and in reduction of any other claims of the Government against the Contractor;

(B) Demand immediate repayment of the unliquidated balance of the advance payment(s) hereunder; or

(C) Take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of the advance payment(s) hereunder and in reduction of any other claims of the Government against the Contractor.

(l) *Prohibition against assignment.* Notwithstanding any other provision of this contract, the Contractor shall not, while any part of the advance payment(s) is unliquidated, pledge, or otherwise assign any monies due under this contract, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution. (See clause titled ASSIGNMENT OF CLAIMS).

(m) *Information—access to records.* The Contractor shall furnish to the Contracting Officer signed or certified balance sheets and profit and loss statements monthly, if required by the Contracting Officer, together with a monthly bank statement for the Special Bank Account and such other information concerning the operation of the Contractor's business as may be requested. The Contractor shall afford to authorized representatives of the Government proper facilities for inspection of the Contractor's books, records, and accounts.

(n) *Designations and determinations.* (1) Amount. The amount of the advance payment(s) at any time outstanding hereunder shall not exceed the amount authorized in the Findings, Determinations, and Authorization for the advance payment(s) prepared pursuant to 41 CFR 14H-30.410.

(2) Depository. The advance payment(s) shall be deposited in the bank with which the Agreement for Special Account is established pursuant to 41 CFR 14H-30.411-1.

(o) *Other security.* The terms of this contract shall be considered adequate security for advance payment(s) hereunder.

(p) *Representations and warranties.* To induce the making of the advance payment(s), the Contractor represents and warrants that;

(1) No litigation or proceedings are presently pending or threatened against the Contractor.

(2) None of the provisions herein contravenes or is in conflict with the authority under which the Contractor is doing business or with the provision of any existing agreement of the Contractor.

(3) The Contractor has the power to enter into this contract and accept an advance payment(s) hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this contract.

(4) None of the assets of the Contractor is subject to any lien or encumbrance of any character except for current taxes not delinquent. There has been no assignment of claims under any contract affected by these advance payment provisions, or if there has been any assignment, such assignments have been terminated.

(5) All information furnished by the Contractor to the Contracting Officer in connection with the request for an advance payment is true and correct.

(6) These representations and warranties shall be continuing and shall be deemed to have been repeated by the submission of any subsequent request for additional advance payment(s) under this contract.

(q) *Subadvances.* Subject to the prior written approval of the Contracting Officer, funds from the Special Bank Account may be used by the Contractor to make advance payment(s) or down payments to subcontractors and suppliers of material in advance of performance by the subcontractor or suppliers of material. Such subadvances shall not exceed the subcontract price or estimated cost as the case may be, and the subcontractors or suppliers of material to whom such advance payment(s) is made shall furnish adequate security therefor. Unless other security is required by the Contracting Officer, covenants in subcontracts, expressly made for the benefit of the Government providing for a Special Bank Account for the subadvance with Government lien thereon, and providing for a Government lien, paramount to all other liens, on all property under such subcontract, and imposing upon the subcontractor and the depository bank substantially the same duties and giving the Government substantially the same rights as are provided herein (and in the Agreement for Special Bank Account supplemental hereto) between the Government, the Contractor, and the Bank may be considered as adequate for such subadvance(s). Subadvances shall not be made without payment of interest of six percent per annum unless adequate justification is first furnished to and approval obtained by the Contracting Officer, as provided in 41 CFR 1-30.403(b).

(r) *Covenants.* During the period of time that an advance payment(s) made hereunder remains unliquidated, the Contractor shall not, without prior written consent of the contracting officer:

(1) Mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the Contractor now owned or hereinafter acquired by it, or permit any pre-existing mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to the performance of this contract and with respect to which the Government has a lien hereunder;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any such stock, except as required by sinking fund or redemption arrangements reported to the Contracting Officer incident to the establishment of these advance payment(s) provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except direct obligations, of the United States;

(6) Make any advance or loan to or incur any liability as guarantor, surety, or accommodation endorser for any other firm, person or corporation;

(7) Permit a writ of attachment or any similar process to be issued against its property without procuring release thereof or bonding the same within 30 days after the entry of the writ of attachment or any similar process;

(8) Pay any salaries, commissions, bonuses, or other remuneration in any form or manner to its directors, officers, or key employees in excess of existing rates of payments, or of rates provided by this contract, or in existing agreements, in connection with which notice has been given to the Contracting Officer, or accrue such excess remuneration without first obtaining an agreement subordinating the same to all claims of the Government hereunder.

(9) Make any substantial change in management, ownership, or control of the organization with which this contract is made.

(10) Merge or consolidate with any other firm or corporation, change the type of its business, or engage in any transaction outside the ordinary course of its business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation; or

(12) Create or incur indebtedness, borrow money or advances other than advances to be made hereunder, except as specified herein.

MORRIS THOMPSON,
Commissioner of Indian Affairs.

[FR Doc.74-26209 Filed 11-7-74;8:45 am]

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

IN REPLY REFER TO:
Tribal Government
Services

Memorandum

JAN 18 1974

To: All Area Directors

From: Commissioner of Indian Affairs

Subject: Tribal Government Development Program (TGDP) Guidelines for FY 1975

Rather than continue separate administration of the Tribal Affairs Management Program and TGDP, TAMP will be merged into TGDP starting in FY 1975 under the enclosed operating procedures.

Applications may be submitted to the Superintendent, or other Bureau official having immediate responsibility for serving the applicant tribe, no later than March 1, 1974. The Area Director may wish to establish a further deadline sometime in March so that applications will be received from the Agencies in time to allow for the required Area Office review before the March 25 deadline for receipt of all applications in this office.

In the new guidelines, we have attempted to consolidate and clarify the various concepts and policies which have developed during the formative periods of both TAMP and TGDP. In addition, you will note a section which states those responsibilities which have been assigned to the Bureau field offices and are to be exercised by individuals designated by the Area Director. However, the Area Director and the Superintendent are specifically responsible for certifying that the information provided in the application is accurate and complete. Should there be any question regarding special circumstances, please attach a memorandum of explanation.

We are committed to an equitable method for determining those tribes which are most qualified to participate in the program based on financial need.

We assume that all tribes have some need to improve their governing functions. It is those who lack the financial resources to make such improvements, however, that will be given the highest priority.

Since the same degree of financial need for the various tribes does not exist equally among all of the Areas, there is no nationally equitable basis upon which each Area can make its own selection of TGDP participants. Allowing all tribes to compete among themselves on a nationwide basis is the only way to be fair to all concerned.

We will continue to use the qualifying formula in order to avoid subjective considerations. However, the objectivity of the formula is only as good as the factors which go into it. Therefore, it is essential that you insure the accuracy and completeness of the information provided by the applicants. Further, we wish to emphasize the importance of your responsibility to insure that the Bureau and the tribe comply with the provisions to which both parties agree and set forth in a TGDP contract. It is only in this way that we can develop with Indian tribes a relationship of mutual respect and trust.

We plan to provide to you, during the first week in May, the information you will need to advise the applicants in your Area whether or not they are eligible to enter into contract negotiations. We are asking you to perform a similar service regarding the distribution of the enclosed guidelines announcing the open season.

As you will note under Section IX, all federally recognized tribes are eligible to submit applications. However, those who have already had three years of participation under TAMP will be assigned a lower priority.

We recognize that staff shortages and the press of other business could delay processing of TGDP contracts. However, we have scheduled the application procedure so as to allow approximately two months during which contracts can be negotiated and signed. We urge you to do all that you can to insure that such contracts start functioning on July 1.

Morris Thompson
Commissioner

Enclosures

Guidelines

Tribal Government Development Program
(TGDP)

FY 1975

U. S. Department of the Interior

Bureau of Indian Affairs

Washington, D. C. 20245

Issued January 1974

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Section I - Background

TGDP in FY 1975 will be a combination of two programs of aid to tribal governments which heretofore were separately administered; TGDP and The Tribal Affairs Management Program (TAMP).

TAMP first became operational during FY 1972 when 25 tribes participated in the program based on the recommendations of an all-Indian selection panel. While it had several options, its primary objective was to assist tribes in strengthening the business management capabilities of tribal governments. Twenty-three of the original 25 participants have contracted under that program for each of the last three fiscal years.

Following the establishment of TAMP, the administrative responsibility for the program was assigned to the former Division of Tribal Operations which had been working on the creation of another program of aid to tribal governments called the Tribal Government Development Program (TGDP). Sixty tribes qualified for TGDP contracts during each of the first two years of its existence (FY 1973 and FY 1974). An objective formula determined those who were qualified rather than the use of a selection panel, as in TAMP.

While considerable latitude was available under TGDP, its primary objective was to strengthen tribal governing functions. Because of the flexibility of each program, there developed considerable overlap and since both programs were being administered by the Division of Tribal Government Services, there remained little justification for continuing their separate operation. Accordingly, the two programs are being merged for FY 1975 under a single set of administrative procedures and will be called "Tribal Government Development Program" (TGDP).

Section II - Program Objectives

Recognizing that the success of all social and economic improvement programs is largely dependent upon an effective tribal government, Congress has appropriated increasing sums of money to help strengthen tribal governmental and managerial functions. TGDP is designed to give priority assistance to the so called "have-not" tribes. It is not an attempt to reward good management. Rather, it makes it possible for tribes with little or no financial resources

to develop and/or improve their governing or managerial functions through the achievement of specific tangible products (deliverables). Such deliverables are furnished to the Bureau in exchange for money provided as set forth in a contract between the tribe and the Bureau.

TGDP is not a grant, neither is it a fund to be used for the payment of salaries for tribal officials. A TGDP participant enters into a binding agreement (contract) in which the Bureau agrees to pay for those deliverables which the tribe considers to be highest on its list of priorities and yet within the scope of the program and the dollars available. Some examples of work that could be undertaken and resulting deliverables are as follows:

Examples

Scope of Work	Deliverable
1. Establish and implement a record keeping system.	An outline of the system explaining how it functions.
2. Draft proposed amendments to tribal constitution to comply with the one man, one vote concept.	Copy of proposed amendments and a plan of how they will be put into effect.
3. Develop and implement a tribal personnel management system including position descriptions, salary schedule, and policies for handling sick leave, vacations, promotions, hiring and firing.	A report outlining of the system and showing how it was implemented.
4. Create a set of election procedures including provisions for voter registration, secret balloting, absentee voting, an impartial election board, and a method for resolving election disputes.	Copy of election ordinance enacted by the governing body.
5. Establish a tribal office and consolidate all existing records.	Report on accomplishments.
6. Update tribal membership roll and develop procedures for keeping it current.	Copy of completed roll and enrollment procedures.

7. Train ____ (number) tribal officials or employees in the fundamental skills of tribal government through such things as: (a) visits to other tribal councils (b) workshops conducted at the reservation (c) exchange visits with local municipal governments.	Report on the training received, names of participants, concepts learned which are applicable to the tribe, and a plan for their adoption.
8. Establish a system for the development and management of tribal business enterprises.	Report describing the accomplishments and an outline of the system.
9. Develop possible sources for continuing revenue for financing tribal government, i.e., (a) agreements with the state for sharing in revenue derived from collection of retail sales taxes on the reservation; (b) setting up a business and occupational tax for reservation merchants; (c) setting aside a portion of judgment award to accrue interest; (d) self taxation.	Report of contacts made and results of efforts including a plan for implementing any revenue producing system found to be feasible.
10. Plan for the use of anticipated judgment award.	Copy of the plan.

While it is not the purpose of TGDP to contract for the payment of salaries, it is understandable that persons qualified to accomplish the contract deliverables will have to be employed. However, it is the deliverable and not the salary for which the contract must be written. Since TGDP is intended to be a source of funds for only a limited period of time, it is more important to achieve some specific tangible improvements which will

be of lasting value than to merely pay the salaries of tribal leaders so they can perform the routine business of the tribe. In planning what is to be achieved under TGDP, the tribe should avoid attempting to accomplish more than it can reasonably expect to complete in one year.

Section III - Exclusions

1. The use of TGDP funds to pay a tribal attorney for general counsel or other services is not within the scope of the program. However, TGDP funds may be used to pay an attorney for the performance of specific work necessary to achieve a contract deliverable, provided it is not in violation of 25 USCA 81.

2. The use of TGDP funds to pay tribal members in their roles as tribal representatives is not acceptable, i.e., the payment of salaries as such.

3. The purchase of land is not within the scope of TGDP even though a tribe may reason that such land could be the basis for generating continuing revenue. There are other sources of funds for land acquisition, i.e., the Farmers Home Administration Loan Program.

Section IV - Required Deliverables

One of the required deliverables is that each TGDP contract must be written so as to require the tribal government to present to the tribal membership, a written plan setting forth the way in which the funds are to be used. That plan must be presented within thirty (30) days following the effective date of the contract.

A second required deliverable for all TGDP contracts is a written report that must be submitted to the membership within one month following conclusion of the contract period describing actual accomplishments. A copy of each of the above reports shall be submitted to the Bureau as contract deliverables.

Section V - Definition of Terms

1. Available Tribal Funds (ATF) as of February 1, 1974

Of major significance is the amount of money a tribe has available to it for purposes of improving its governing functions. We recognize the tendency for tribes to reason that none of its money is available because so much is budgeted for the operation of the tribal government, some is allocated for the operation of various programs, and other funds are needed to operate and maintain tribal buildings. Still other monies may be invested to produce continuing revenue. Tribes which possess many thousands of dollars and have regular income may still consider themselves as having financial need and, therefore, entitled to contract under TGDP. However, there are many groups that have little or no tribal funds. These are the tribes that TGDP is designed to help and such entities have highest priority.

Accordingly, in determining the amount of funds a tribe has available, the following general principle will be used:

> As of February 1, 1974, all tribal funds must be counted as available if the tribe has discretion over how such funds are to be used.

If the tribe prefers to use its own available funds elsewhere, we can only assume that the tribe considers as lesser priority, the improvement of its governing functions. Those categories of funds, which we consider to be beyond the discretion of the tribe, for purposes of this program, are listed below: (Should circumstances exist which are not covered by this Section, it shall be the responsibility of the Superintendent and the Area Director to attach a memorandum of explanation to the TGDP application.)

Funds that WOULD NOT be included as AVAILABLE:

(a) Funds set aside by STATUTE for specific purposes

(b) Revenue Sharing Funds - from U.S. Treasury Department

(c) Funds provided by Government or private agencies for a specific purpose other than the operation or improvement of tribal government

*(d) Judgment Funds - until actually available to the tribe

* Until the date the plan for their use is approved by Congress or the date of the enactment of enabling legislation, judgment funds will be considered unavailable. In those instances where two or more tribes are involved in the same award, the amount of the funds that are available to each may not actually be known until their respective rolls are approved by the Secretary of the Interior.

2. Available Tribal Funds Per Capita (ATFP)

The amount of money, on a per capita basis, which the tribe could spend for purposes of TGDP, based on the tribe's Service Population.

3. Computed Funding (CF)

The amount for which the applicant qualifies according to the formula.

4. Constant Factors

Those factors associated with the Qualifying Formula which are fixed for all tribes or for each of the tribes in the respective Service Population groups, i.e., Funding Rate, Minimum Funding Level and Maximum Funding Level.

5. Deliverable

A specific tangible product produced by the TGDP participant in exchange for money provided by the Bureau. For example, a set of election procedures, proposed amendments to the constitution, or a copy of a plan for personnel management, etc. Each deliverable would have a dollar value in the contract.

6. Funding Level (FL)

The net amount for which a TGDP contract can be written after computing the formula and considering both minimum and maximum funding levels.

7. Funding Rate (FR)

The dollar amount, for each member of the Service Population, which normally would be spent by tribes of various sizes to improve their governing functions.

8. Maximum Funding Level

The highest amount a tribe might receive under contract even if the Qualifying Formula shows a greater amount. A tribe will be limited to such dollar amount even if its Computed Funding is higher than that amount. The Maximum Funding Level will be established after receipt of the FY 1975 TCDP applications. For Alaska participants, the Cost of Living Allowance will be applicable.

9. Minimum Funding Level

The lowest amount a tribe might receive under contract even if the Qualifying Formula shows a lesser amount. A tribe who qualifies by the formula for any amount, will at least be given the opportunity to contract for a minimum dollar amount which will be established after receipt of the FY 1975 TGDP applications.

10. Plan A

The system by which certain tribes having the highest priority are awarded interim Funding Level contracts which will become effective on July 1, 1974. Those contracts may be amended upon receipt of the anticipated increase in the FY 1975 appropriation.

11. Plan B

The system for awarding contracts to qualified tribes with lesser priority than those under Plan A. Contracts under Plan B will not become effective until the Bureau's receipt of the FY 1975 anticipated increase in appropriation; likely during October 1974. Such contracts will run for twelve months even though that period will extend beyond the end of FY 1975.

12. Service Population

Those Indians living on or near the reservation (former reservation in Oklahoma) who receive services from the tribe's governing body. This figure will be supplied by the Commissioner from either of two sources: (excluding Alaska)

A. The 1970 census count (U. S. Bureau of Census) of Indians who have identified with a tribe and live in those counties where the tribe's reservation (former reservation in Oklahoma)

is located and any adjacent counties containing trust or restricted land pertaining to the tribe. Actual residence on trust or restricted land is not, however, required.

B. Revenue Sharing figures as of 1970.

The Commissioner will compute the formula both ways and designate as Service Population the figure that will result in the highest level of funding.

For Alaska applicants, the Commissioner will use the count from the roll prepared pursuant to the Alaska Claims Settlement Act.

The purpose of this new approach is to achieve consistency among tribes in the application process. Previously, the basis for determining the Service Population varied considerably.

13. TGDP Coordinator

The person designated to coordinate the overall functions of the program, located in the Washington Office, Division of Tribal Government Services:

Bob Farring Phone (202) 343-4045
(202) 343-4046

14. Tribe

As used in these guidelines, the word "tribe" shall mean any federally recognized Indian tribe, band, community, association, pueblo, or Native village.

15. Variable Factors

The factors to be used in the Qualifying Formula which vary for each tribe, as opposed to the constants. Service Population and Available Tribal Funds Per Capita are variable as far as the formula is concerned.

Section VI - Qualifying Formula

Since the purpose of TGDP is to assist financially needy tribes to improve their governing functions, it is imperative that priority be given to those applicants having the greatest need. In making such determination, we have

developed a formula which is intended to remove as much as possible any subjective considerations from the selection process. The tribe provides the input verified by the Superintendent and the Area Director, and the formula described below determines whether an applicant is qualified and for how much.

$$CF = (FR - ATFP)\ SP$$

The abbreviations are explained below:

CF = Computed Funding. The amount for which the applicant qualifies according to the formula. However, should this figure be lower than the established Minimum Funding Level for TGDP contracts, the tribe may contract up to the minimum amount. In the event the CF exceeds the established Maximum Funding Level for TGDP contracts, the tribe may contract for no more than the Maximum Funding Level.

FR = Funding Rate. The dollar amount, for each member of the Service Population, which normally would be spent by tribes of various sizes to improve their governing functions. Tribes with a smaller Service Population require a higher per capita expenditure because of fixed costs. The FR for tribes of various sized Service Populations will be determined after the closing date for receipt of TGDP applications. Such rates will be uniformly applied for the respective sized tribes.

ATFP = Available Tribal Funds Per Capita. The amount of money, on a per capita basis, which the tribe could spend for purposes of TGDP, based on the tribe's Service Population. (see Available Tribal Funds in Section V)

SP = Service Population. Those Indians living on or near the reservation (former reservation in Oklahoma) who receive services from the tribe's governing body. (see Definition of Terms Section)

Use of the Formula (Example)

Service Population (SP) = 850

Available Tribal Funds (ATF) = $ 12,815

Available Tribal Funds Per Capita (ATFP) = $ 15.08 (ATF ÷ SP)

Funding Rate (FR) = $ 32.00

CF = (FR - ATFP) SP

= (32.00 - 15.08) 850

= 16.92 X 850

= 14,382 Computed Funding

Assuming that a Minimum Funding Level of $8,000 and a Maximum Funding Level of $35,000 is established for FY 1975, the Funding Level for the above example tribe would be the same as the CF, i.e., $14,000 (rounded up to the nearest $100) since the CF falls between the Minimum and the Maximum Funding Levels. Accordingly, a contract could be written for $14,400.

Section VII - Anticipated Increase in Appropriations

In the event we actually receive from Congress the requested increase in funding for TCDP in FY 1975, some of the successful applicants will likely qualify to contract for a greater amount of their needs as determined by the Qualifying Formula. This would result from raising the Maximum Funding Level above the $20,000 limit. Due to increases in the cost of living, we are also considering a change in the Minimum Funding Level from its existing $5,000 level. Further, we contemplate some adjustments in the Funding Rates for tribes of various sized Service Populations.

In an effort to meet the relative needs of as many tribes as possible within the funds available, it will not be practicable to assign any meaningful dollar amounts to the above mentioned constant factors associated with the qualifying formula until we know the variables in that formula, i.e., Service Population and Available Tribal Funds Per Capita. Accordingly, we will await our receipt of completed applications before arriving at a value for the above mentioned constants.

At that time, we will use the formula to determine which tribes are qualified to contract for what amount of money, based on the anticipated increase in appropriations. However, since the Interior Department's Appropriations

Bill usually does not become law until late in the first quarter of the fiscal year, we will likely be operating until that time under a Congressional Continuing Resolution. That resolution would limit expenditures to the rate of spending based on the same period of the previous fiscal year.

Section VIII - Assignment of Contracts

In view of the circumstances described in Section VII, the following factors must be considered in implementing TGDP for FY 1975:

1. The Interior Department Annual Appropriation Bill will not likely become law until sometime during the first quarter of the fiscal year.

2. There is a chance that the anticipated increase for TGDP may not materialize and we may be limited to either the amount of the FY 1974 appropriation ($1,322,000) or some higher amount but less than the FY 1975 budget request.

3. While we are not aware of any effort to cancel our request for increased funding, all we can be reasonably certain of having available for TGDP in FY 1975, is the amount appropriated for TAMP and TGDP in FY 1974 ($1,322,000).

4. We are committed to an application schedule which will provide the necessary lead time so that TGDP contracts will start functioning on July 1, 1974.

Accordingly, we plan to implement the FY 1975 program in two stages, described below as Plan A and Plan B. Before implementing either plan, however, it will be necessary to make an overall determination as to which applicants qualify for the program, based on FY 1975 considerations.

After considering the number of applicants, the service populations and the amount of Available Tribal Funds Per Capita, a set of Funding Rates will be established; one for each of several sized population groupings. Such Funding Rates will be set with the view toward using the entire amount of

the anticipated $2,650,000 FY 1975 appropriation. When it is known which tribes qualify for the program, they will be listed according to the order of their priority of need. Such listing will also show the amount for which each tribe qualifies, i.e., their Funding Level which is related to the anticipated $2,650,000 appropriation.

Since FY 1975 funds will not be available, it will not be possible to authorize, in advance of our receipt of such funds, the negotiation of contracts in the amounts related to the anticipated FY 1975 appropriation. However, those amounts will be announced to the tribes during the first week of May 1974.

In an effort to at least partially implement the program starting on July 1, 1974, even though we will not know whether we will receive the requested increased appropriation, we will use an interim funding arrangement known as Plan A.

Plan A

Under this plan, figures taken from the applications of those who qualified for the FY 1975 program as outlined above, will be used. However, this time, the formula will use the same Funding Rates, Minimum Funding Level and the Maximum Funding Level which were used during the initial TCDP application process (FY 1973). Interim Funding Levels will then be established for those tribes from that list who continue to qualify pursuant to the factors used in FY 1973. From such list, that number of tribes will be selected whose cumulative total of their Funding Levels will amount to $1,322,000, allowing for alternates. Those tribes will be considered as the Plan A group and the remainder will be known as the Plan B tribes.

Plan A tribes will be advised during the first week of May 1974 that they have qualified under the FY 1975 program to contract for up to a certain level of funding, for example, $30,000. However, each tribe will be further advised that its contract will be limited to an Interim Funding Level, e.g., $20,000. This will enable the tribe and the Bureau to proceed with preparations so that the contract can start functioning on July 1, 1974. Such Plan A tribe will be aware that another $10,000 will be available to it, in the event the anticipated $2,650,000 is actually appropriated and can plan for adding further deliverables to the contract.

At that time (likely about October 1974) the contract may be amended to include the further deliverables and the tribe will then be participating at the level for which it qualified under FY 1975 terms.

Plan B

Those qualified applicants who were not included with Plan A tribes, will also be advised during the first week of May 1974 regarding the amount for which they qualified based on FY 1975 considerations. However, the Plan B tribes will await the Bureau's actual receipt $2,650,000 appropriation before they will be authorized to contract. At that time (likely late October or early November 1974), and when signed, Plan B tribes can then begin functioning under contracts which shall have already been negotiated in anticipation of the Bureau's receipt of FY 1975 appropriations. While Plan B tribes will not be permitted to start functioning under contract at the beginning of the fiscal year, their contracts will, nevertheless, run for twelve months, even though such period will extend beyond the end of FY 1975. It must be understood, however, that the bulk of the work must be completed within the fiscal year and that any TGDP contract for which those tribes may qualify for the next fiscal year, would be for different deliverables than contained in the FY 1975 contract.

Other Considerations

In the event Congress appropriates no increase over the amount provided in FY 1974, the FY 1975 TGDP participation will be limited to the Plan A tribes. Should some amount more than the $1,322,000 and less than the $2,650,000 be appropriated, only a limited number of Plan B tribes would be offered the opportunity to contract, i.e., those having the greatest priority in relation to the funds available.

Effect on Contracts

TGDP contracts will have to include provisions to allow for the above circumstances.

Section IX - Eligibility

All tribes having a trust relationship with the Secretary of the Interior are eligible to apply for TGDP for FY 1975, provided they have Service Populations

of at least 100. While the 23 tribes that have participated in TAMP during each of the last three fiscal years will be eligible to apply, they will be assigned a lesser priority than those who have not had the benefit of such funding. A further reduction in priority will be assigned to those who have participated in both TAMP and TGDP.

Those tribes which have had only two years of funding under TGDP, and no TAMP participation, will not have the above restrictions on their eligibility for FY 1975.

Section X - Alternates

At the time a determination is made as to those qualified to contract, a number of alternates will be designated and given a ranking for the purpose of using any savings that may occur during the year. When a participant drops out of the program, the appropriate Area Director will be advised of the opportunity for the next highest ranking alternate to negotiate a contract.

Section XI - Joint Applications

1. Minimum Service Population. Tribes having service populations of less than 100 are not eligible to apply for funding under TGDP. However, two or more groups having less than the minimum service population may file a joint application, provided their combined Service Population is at least 100. Further, the application must be accompanied by resolutions from each of the constituent tribes stating their concurrence in the joint application. The associated groups would be considered as an individual tribe for purposes of determining the amount of the contract.

2. Common Interest Tribes. Any two or more tribes may file a joint application regardless of the size of their respective Service Populations, provided the combined Service Population is at least 100 and the component tribes feel they can effect certain economies through a cooperative funding arrangement. For example, the several tribes may realize they will not have sufficient work under an anticipated contract to warrant the operation of a separate office. Jointly, they could share certain fixed costs and pool

their funds to employ a highly qualified person or persons to achieve the deliverables for more than one of the tribes. In such case, the combined tribes would be considered as a single entity for purposes of determining the amount for which a contract could be written. A resolution stating concurrence in the joint application must be submitted by each of the tribes who are party to the joint request for TGDP.

3. Inter-Tribal Organizations. Existing inter-tribal organizations may submit applications, providing the following conditions are met:

(a) All of the component tribes are federally recognized by the Secretary of the Interior.

(b) Each member tribe submits with the TGDP application a resolution giving its concurrence which excludes such tribe from making an individual TGDP application.

(c) The inter-tribal organization possesses certain governmental authorities delegated to it by each of the component member tribes of the organization. Evidence of such authority must accompany the application.

If an inter-tribal organization meets the above conditions, it will be considered for funding as if it were a single tribe.

Section XII - Responsibilities

TGDP applicant and/or participant:

(a) Submit timely and accurate application.

(b) Request help from Superintendent in completing application, if needed.

(c) Participate in negotiating contract.

(d) Comply with contract terms.

(e) Cooperate with Contracting Officer's Representative (COR).

(f) Timely submission of required reports and deliverables.

Bureau Field Offices: As determined by the respective Area Directors, the following are included among the responsibilities of the Area Director and/or Superintendent, the Contracting Officer, COR, and the persons having responsibility for Tribal Operations functions:

(a) Notify tribes about opportunity to apply for TGDP by providing copies of guidelines.

(b) Assist in preparing application, if requested.

(c) Certify as to the accuracy and completeness of application.

(d) Explain to the Commissioner any unique circumstances which were considered in arriving at factors to be used in the qualifying formula. (Available Tribal Funds)

(e) Timely transmittal of applications.

(f) Notify all applicants as to whether or not they were successful, following receipt of such information from Commissioner.

(g) Conduct Area meetings during May or early June involving representatives of successful applicants, Contracting Officers and Tribal Operations personnel to plan for FY 1975 and initiate contract negotiations so that all contracts start functioning on July 1, 1974.

(h) Determine the specific type of contract to be used.

(i) Provide copies of all contracts, and/or modifications thereto, for the Commissioner, Attn: 440 within two weeks following their effective date.

(j) Notify Commissioner of any contracts not in effect by the September 30, 1974, deadline.

(k) Advise alternates when they become entitled to participate and assist them in consummating a contract.

(l) Submit report to Commissioner by August 15, 1975, setting forth deliverables actually produced by tribes under the

FY 1975 contracts and received by the Bureau (see Schedule of Deadlines).

(m) Withdraw funding and/or cancel contracts in those instances where participants fail to comply with such agreement and advise the Commissioner of such action so that the Commissioner may allocate such funds to the next highest ranking alternate.

(n) Keep TGDP Coordinator advised of status of contracts by providing copies of pertinent reports and through telephone conversations.

Commissioner:

(a) Issue program guidelines.

(b) Establish Funding Rates, Minimum Funding Level and Maximum Funding Level after receipt of applications.

(c) Determine the amount for which each successful applicant is entitled to contract on a nation-wide basis by using the information provided by the applications and applying it to the Qualifying Formula.

(d) Notify each Area Director of the outcome of the applications submitted from his Area.

(e) Maintain a list of alternates which will be entitled to contract in the event of savings.

(f) Issue advices of allotment.

(g) Have responsibility for the over-all administration, coordination and evaluation of the program.

Section XIII - Schedule of Deadlines

Mid January through February 1974

Open season for submitting applications to Superintendent.

March 1, 1974

Last day for receipt of applications by Superintendent.

March _____

(The Area Director will establish this deadline for his receipt of applications from the Superintendents so as to allow time for his review before transmitting them to the Commissioner.)

March 25, 1974

Last date for receipt by Commissioner of applications from the Area Directors.

First Week of May 1974

Commissioner's notice to Area Directors announcing successful applicants. Area Directors will promptly notify all applicants as to the outcome of their request for TGDP.

Mid May through Early June 1974

Conduct Area meetings involving representatibes of successful applicants, Contracting Officers and Tribal Operations personnel to plan for FY 1975 and initiate contract negotiations.

Sometime in June 1974

Washington Office issue tentative allotments to the field offices.

July 1, 1974

Contracts start functioning for Plan A tribes.

September 30, 1974

Last day for Plan A contracts to become effective.

October 1, 1974

Withdrawal of funds for all Plan A tribes without contracts in effect as of September 30, 1974.

October 15, 1974

Notify Plan A alternates and issue advices of allotment.

Sometime in October 1974

Authorize Plan B tribes to start functioning under FY 1975 contracts if sufficient funds are appropriated.

December 1, 1974

Deadline for Plan A alternates to have contracts in effect before withdrawing funds and making them available to other alternates.

January 31, 1975

Last day for Plan B contracts to become effective.

February 1, 1975

Withdrawal of funds for all Plan B tribes without contracts in effect as of January 31, 1975.

February 15, 1975

Notify Plan B alternates and issue advices of allotment.

April 1, 1975 (no fooling)

Deadline for Plan B alternates to have contracts in effect before withdrawing funds and making them available to other alternates.

June 30, 1975

End of FY 1975 contract period for Plan A tribes.

August 15, 1975 (Plan A Tribes)

Deadline for Area Directors to submit to the Commissioner reports of all deliverables actually produced by each tribe and received by the Bureau for each FY 1975 TGDP contract. Also included will be a listing of any contracted deliverables which the tribes failed to produce and what action was taken to compensate for such deficiency, i.e., withholding of payment, etc.

December 15, 1975 (Plan B Tribes)

Deadline for Area Directors to submit to the Commissioner reports of deliverables as outlined above under August 15, 1975, for Plan A tribes.

Section XIV - Application Procedure

An application form is attached to these guidelines. It is to be completed by each applicant and submitted to the local Bureau Official responsible for serving the tribe (usually the Superintendent), no later than March 1, 1974. Assistance is available from local Bureau Officials. The Superintendent, or Officer in Charge, is responsible for certifying the accuracy and completeness of the information and sending it to the Area Director by the deadline established by the Area Office. The Area Director is also responsible for certification as to the accuracy and completeness of the application and transmitting it along with any comments and necessary attachments to the Commissioner so as to arrive in the Washington Office no later than March 25, 1974.

Section XV - Continued Participation

Participation in this program is intended to be of limited duration with the expectation that it will enable tribes to generate their own revenue which will finance continued tribal government. TGDP contracts will be effective for a single year. If a recipient tribe desires to participate

in FY 1976, it will be necessary to submit an application during the next annual open season. The following will be considered in determining whether a further contract is awarded:

1. Number of previous TGDP or TAMP contracts.
2. Performance under previous contracts.
3. Whether the tribe qualifies under the formula.
4. Availability of program funds.

ID No. _____
(to be supplied by BIA)

Application Form
Tribal Government Development Program
(TGDP)
FY 1975
Bureau of Indian Affairs

Tribe _____

Area _____

Agency _____

State _____

This form is to be completed by the applicant and submitted with appropriate attachments to the Superintendent no later than March 1, 1974. The Superintendent is responsible to certify the accuracy of the information and convey it to the Area Director in sufficient time for his review and transmittal to the Commissioner so as to reach Washington, D. C. no later than March 25, 1974. The Area Director and/or the Superintendent may require certain documents to substantiate the figures provided herein.

1. Name of Tribe _____

2. Available Tribal Funds, as of 2-1-74 (see Sec. V of Guidelines)

   U. S. Treasury (other than judgment funds) $ _____

   Judgment Funds $ _____

   Local Funds $ _____

   Total Available Tribal Funds $ _____

3. A list of deliverables for which the tribe wishes to contract must be attached to this form, arranged in order of priority and each one assigned an estimated cost.

4. The attached resolution names the individual authorized by the tribal governing body to sign the application, negotiate the contract, and sign such agreement (TGDP Contract).

We, the undersigned, hereby certify that the information provided in this application is accurate and complete. (Criminal penalties are provided by statute for knowingly filing false information, 18 USC 1001)

Tribal Representative	Date	BIA Superintendent	Date	Area Director	Date

The Area Director is responsible for transmitting this form and attachments to the following address so that it arrives no later than March 25, 1974:

Commissioner of Indian Affairs
ATTN: TGDP Coordinator, Code 440
1951 Constitution Avenue, NW.
Washington, D. C. 20242

LIST OF SOURCE MATERIALS

1. Draft: Model Criminal Procedures Code and Commentary

This Code and commentary was prepared by the Indian Civil Rights Task Force of the Solicitor's Office, Department of Interior, pursuant to the requirements of the 1968 Indian Civil Rights Act (Title III). The document is intended to provide guidelines for Indian tribal courts in the application of the Indian Bill of Rights and, as such, does not set out requirements which are to be taken as binding on Indian courts. Reportedly, the Solicitor's Office is now debating whether or not to proceed with its originally expressed intention of distributing full copies of this draft to all tribal courts, councils exercising judicial authority and tribal attorneys, or simply printing the draft in the Federal Register with an allowance of sixty days for comments.

Because of its approach in furnishing guidelines and extensive commentary rather than simply spelling out cut and dried provisions the draft has the potential of becoming an enormously helpful device of enduring value to Indian tribal courts. Obviously it would be a waste of a major effort to allow it to become buried in the Federal Register. As our researchers have documented in their reports, most tribal courts have a great need of just this sort of guidance, particularly in the area of the requirements of the 1968 Indian Civil Rights Act.

To request a copy of the Draft: Model Criminal Procedures Code and Commentary, write to: Ms. Fran Ayer or Peter Taylor
Indian Civil Rights Task Force
Solicitor's Office
Department of the Interior
Washington, D. C. 20240

2. 1974 Report of the Task Force on Indian-State Government Relations, South Dakota

This report includes an analysis of legal relationships between the state government and Indian tribal governments, discussion of the establishment of mutual policies and formal agreements between the Indian tribes and the state government. The Task Force is an agency under the state governor's office staffed by an Indian director which maintains a liaison between the governor and the Indian tribes in the state. The report itself is an attempt to document and explain the efforts of this state agency at formalizing communication and cooperative efforts between the state and tribes. Students of tribal government will find that while the document is not a scholarly

or comprehensive work it is a very interesting study and warrants a close look. Copies of the report are available through:

Thomas Shortbull, Director
Task Force on Indian-State
Government Relations
117 E. Sioux
Pierre, South Dakota 57501

3. Land Use and Purchase Patterns on the Pine Ridge Reservation

Commissioned by the present superintendent of the Pine Ridge Indian Reservation, this report documents a very alarming trend with regard to land use. Non-tribally held trust land on the reservation apparently is being utilized almost exclusively by non-Indians or "marginal" Indians (i.e., those tribal members with minimum blood quantum who have demonstrated a consistent opposition to tribal interests). A parallel development is the sale of trust lands the placing of such lands in non-trust, fee patent status. If not reversed, this trend will most certainly result in the destruction of the reservation land base. A very critical factor in this process is the role of the BIA in approving the sale of trust land. As trustee, the BIA apparently has neglected its responsibility in either publicizing the situation or taking a strong initiative. For copies of the study contact: Albert Trimble, Superintendent
Pine Ridge Indian Agency
Pine Ridge, South Dakota 57770

4. Indian Finance Act Conference - August 15-16, 1974

The National Congress of American Indians (NCAI) coordinated this conference four months after the United States Congress passed the Indian Finance Act and prior to the final drafting of regulations by the BIA. The meeting attempted to explain the history of the Act, how it was intended by Congress to be implemented and how the tribal representatives could favorably influence the Bureau regulations.

Copies of the transcript of this meeting may be obtained through the: National Office, NCAI
1430 K Street, N. W.
Washington, D. C. 20005

5. A Study of Federal Indian Domestic Assistance Programs (FIDAP)

The study was conducted by the National Council on Indian Opportunity. The report, approximately 27 pages in length, was originally released by them in February of 1974, reprinted and released by the National

Congress of American Indians in August 1974. For a discussion of the FIDAP study, see infra, page 138 of this report. NCAI has a limited number of copies available and they may be obtained through the address listed in #4 above.

6. Conference on Indian Energy (August 29, 1974 - Billings, Montana)

This conference was organized by NCAI to bring together those tribes possessing coal reserves and other natural resource potential to explore with them joint strategies the tribes might take to insure that tribally owned resources are developed in the manner and pace which suit the needs of the tribes and also to inform the tribes of the optimum procedures they could take to gain strong bargaining positions with the natural resource companies and Bureau of Indian Affairs. The transcript runs several hundred pages and a very limited number of copies are available through NCAI. It is interesting to note observations made by tribal leaders and advisors at this conference reinforcing the points made by our researchers with regard to development of a tribal government's capacity to regulate natural resources on their reservation as an aspect of self-government. Transcripts of the proceedings may be obtained through NCAI. See #4 for the address.

7. Transcript of Worshops - NCAI's 31st Annual Convention (October 24-27, 1974)

Topics include:

1. Federal Indian Services
2. Tribal Government
3. Indian Health and Education
4. National and International Indian Relations
5. Tribal Natural Resources, and
6. A special workshop on National Indian Policy Review Commission

Copies of the transcripts may be obtained through NCAI. See #4 for the address.

8. Transcript of Working Conference on Tribal Government (March 15, 1974)

This conference was co-sponsored by NCAI, The Native American Rights Fund, the Institute for the Development of Indian Law, the National American Indian Court Judges Association and the American Indian Lawyers Association. The meeting was organized by the American Indian Lawyer Training Program and hosted by the Indian Law Center in Albuquerque, New Mexico. Panelists attempted to focus on tribal

constitutions and the need for reform of the same to meet the changing demands of modern society. The meeting was well attended and, as reflected in the transcript, very informative and stimulating. Copies of the transcript may be obtained through the offices of AILTP:

The American Indian Lawyer Training Program
477 - 15th Street, #200
Oakland, California 94612

9. The Indian Civil Rights Act - Five Years Later

This is a report of a meeting of Indian lawyers, tribal judges and tribal council members coordinated by the Indian Lawyers Association and conducted May 7-8, 1973. The transcript is certainly a very interesting and thoughtful analysis of exactly how the Act is affecting Indian tribes at present. This is a complicated problem and the record of this meeting should be a very helpful discussion for students of tribal government. Copies may be obtained through:

The Indian Law Reporter
1000 Wisconsin Avenue, N. W.
Washington, D. C. 20007